BEST COPY
AVAILABLE

United Nations

Report of the Committee for Programme and Coordination

Forty-second session (10 June-5 July and 9 July 2002)

General Assembly
Official Records
Fifty-seventh Session
Supplement No. 16 (A/57/16)

General Assembly
Official Records
Fifty-seventh Session
Supplement No. 16 (A/57/16)

Report of the Committee for Programme and Coordination

Forty-second session (10 June-5 July and 9 July 2002)

United Nations • New York, 2002

Note

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

ISSN 0255-2213

[11 July 2002]

Contents

Chapter		*Paragraphs*	*Page*
	Abbreviations		v
I.	Organization of the session	1–13	1
	A. Agenda	2–4	1
	B. Election of officers	5–6	1
	C. Attendance	7–11	2
	D. Documentation	12	3
	E. Adoption of the report of the Committee	13	3
II.	Review of the efficiency of the administrative and financial functioning of the United Nations	14–45	4
	A. Proposed programme budget outline for the biennium 2004-2005	14–26	4
	B. Efficient and effective measures for management improvement	27–35	7
	C. Different methodologies that might be used to correct the geographical imbalance in hiring consultants	36–45	9
III.	Programme questions	46–306	11
	A. Programme planning	46–61	11
	Programme performance of the United Nations for the biennium 2000-2001	46–61	11
	B. Proposed revisions to the medium-term plan for the period 2002-2005	62–243	13
	Programme 1. Political affairs	62–73	13
	Programme 2. Disarmament	74–78	16
	Programme 3. Peacekeeping operations	79–85	17
	Programme 5. Legal affairs	86–92	19
	Programme 7. Economic and social affairs	93–109	21
	Programme 8. Africa: New Agenda for Development	110-118	29
	Programme 9. Trade and development	119–128	30
	Programme 10. Environment	129–138	33
	Programme 11. Human settlements	139–146	37
	Programme 12. Crime prevention and criminal justice	147–152	41
	Programme 13. International drug control	153–159	42

Programme 14. Economic and social development in Africa 160–168 45

Programme 15. Economic and social development in Asia and the Pacific ... 169–177 47

Programme 16. Economic development in Europe 178–183 52

Programme 17. Economic and social development in Latin America and the Caribbean 184–197 54

Programme 18. Economic and social development in Western Asia 198–206 57

Programme 19. Human rights 207–218 59

Programme 24. Management and central support services 219–225 61

Programme 25. Internal oversight 226–232 62

Programme 26. Least developed countries, landlocked developing countries and small island developing States 233–243 64

C. Evaluation 244–306 67

1. Strengthening the role of evaluation findings in programme design, delivery and policy directives 244–259 67

2. In-depth evaluation of the subprogrammes on General Assembly and Economic and Social Council affairs and Council support and coordination 260–274 70

3. In-depth evaluation of legal affairs 275–290 72

4. Triennial review of the implementation of the recommendations made by the Committee at its thirty-ninth session on the in-depth evaluation of the disarmament programme 291–298 74

5. Triennial review of the implementation of the recommendations made by the Committee at its thirty-ninth session on the in-depth evaluation of the electoral assistance programme 299–306 75

IV. Coordination questions 307–338 77

A. Annual overview report of the United Nations System Chief Executives Board for Coordination for 2001 .... 307–323 77

B. United Nations System-wide Special Initiative for the Implementation of the United Nations New Agenda for the Development of Africa in the 1990s.... 324–338 81

V. Report of the Joint Inspection Unit 339–358 84

Strengthening the investigations function in United Nations system organizations 339–358 84

VI. Improving the working methods and procedures of the Committee within the framework of its mandate 359–367 86

VII. Provisional agenda for the forty-third session of the Committee 368 87

Annexes

I. Agenda for the forty-second session of the Committee 89

II. List of documents before the Committee at its forty-second session 90

Abbreviations

CEB	United Nations System Chief Executives Board for Coordination
ECA	Economic Commission for Africa
ECE	Economic Commission for Europe
ECLAC	Economic Commission for Latin America and the Caribbean
ECPS	Executive Committee on Peace and Security
ESCAP	Economic and Social Commission for Asia and the Pacific
ESCWA	Economic and Social Commission for Western Asia
FAO	Food and Agriculture Organization of the United Nations
HIV/AIDS	Human immunodeficiency virus/acquired immunodeficiency syndrome
HLCM	High-level Committee on Management
HLCP	High-level Committee on Programmes
IMF	International Monetary Fund
NEPAD	New Partnership for Africa's Development
ODCCP	Office for Drug Control and Crime Prevention
OECD	Organisation for Economic Cooperation and Development
OIOS	Office of Internal Oversight Services
UNCTAD	United Nations Conference on Trade and Development
UNDCP	United Nations International Drug Control Programme
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UN-Habitat	United Nations Human Settlements Programme
UN-NADAF	United Nations New Agenda for the Development of Africa in the 1990s
WTO	World Trade Organization

Chapter I

Organization of the session

1. The Committee for Programme and Coordination held its organizational session (1st meeting) at United Nations Headquarters on 13 May 2002 and its substantive session from 10 June to 5 July and on 9 July 2002. It held a total of 20 meetings and a number of information consultations.

A. Agenda

2. The agenda for the forty-second session, adopted by the Committee at its 1st meeting, is contained in annex I.

3. At its organizational session (1st meeting), on 13 May 2002, the Committee approved its programme of work for the forty-second session as contained in document E/AC.51/2002/L.2. It agreed, without prejudice to the provisions of General Assembly resolutions 41/213 and 42/211, to consider the report of the Secretary-General on the proposed programme budget outline for the biennium 2004-2005 (A/57/85) during the first part of its forty-second session and decided to review, if necessary, the holding of a second part of the session at a later stage.

4. In adopting the agenda, the Committee, in accordance with the decision taken at its organizational session, decided to consider at its forty-second session the report of the Joint Inspection Unit entitled "Strengthening the investigations function in United Nations system organizations" (A/56/282) and the related comments by the Secretary-General and the United Nations System Chief Executives Board for Coordination thereon (A/56/282/Add.1).

B. Election of officers

5. At its organizational meeting (1st meeting) on 13 May 2002, the Committee elected, by acclamation, Thomas Freidrich Heinrich **Mazet** (Germany) Chairman of the Committee for the forty-second session.

6. At its 1st and 6th meetings, on 13 May and 12 June, the Committee elected, by acclamation, the following members of the Bureau for the forty-second session:

Vice-Chairpersons:

Collen Vixen **Kelapile** (Botswana)
Seyed Morteza **Mirmohammad** (Islamic Republic of Iran)
Beata **Baranska** (Poland)

Rapporteur:

Alejandro **Torres Lépori** (Argentina)

C. Attendance

7. The following States members of the Committee were represented:

Argentina
Bahamas
Bangladesh
Botswana
Brazil
Cameroon
China
Cuba
Ethiopia
France
Gabon
Germany
Indonesia
Islamic Republic of Iran
Italy
Japan
Mauritania
Mexico
Nigeria
Pakistan
Peru
Poland
Portugal
Republic of Korea
Republic of Moldova
Russian Federation
San Marino
Tunisia
Ukraine
United Kingdom of Great Britain and Northern Ireland
United Republic of Tanzania
United States of America
Uruguay
Zimbabwe

8. The following States Members of the United Nations were represented by observers:

Algeria
Armenia
Austria
Azerbaijan
Barbados
Benin
Burkina Faso
Costa Rica
Croatia
Czech Republic
Denmark
Dominican Republic
Egypt
Fiji
Greece
Guatemala
India
Ireland
Jamaica
Lao People's Democratic Republic
Monaco
Mongolia
Nepal
Philippines
Romania
Saudi Arabia
Singapore
Syrian Arab Republic
Thailand
Uganda

9. The following regional commissions were represented:

Economic Commission for Africa (ECA)
Economic Commission for Europe (ECE)
Economic Commission for Latin America and the Caribbean (ECLAC)
Economic and Social Commission for Asia and the Pacific (ESCAP)
Economic and Social Commission for Western Asia (ESCWA)
Regional Commissions New York Office

10. Also present at the session were the Under-Secretary-General for Management, the Legal Counsel, the Under-Secretary-General for Political Affairs, the Under-Secretary-General for Internal Oversight Services, the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, the Executive Director of the secretariat of the United Nations Human Settlements Programme (UN-Habitat), the Controller, the Assistant Secretary-General for Mission Support, the Assistant Secretary-General, Special Adviser on Gender Issues and Advancement of Women, the Assistant Secretary-General for Policy Coordination and Inter-Agency Affairs, the Special Coordinator for Africa and the Least Developed Countries, and senior officials of the United Nations Secretariat.

11. At the invitation of the Committee, Khalil Issa Othman, Inspector of the Joint Inspection Unit, also participated in the work of the Committee.

D. Documentation

12. The list of documents before the Committee at its forty-second session is set out in annex II.

E. Adoption of the report of the Committee

13. At its 20th meeting, on 5 and 9 July 2002, the Committee adopted the draft report on the work of its forty-second session (E/AC.51/2002/L.6 and Add.1-33).

Chapter II

Review of the efficiency of the administrative and financial functioning of the United Nations

(Item 3)

A. Proposed programme budget outline for the biennium 2004-2005

14. At its 18th and 19th meetings, on 24 and 25 June 2002, the Committee considered the report of the Secretary-General on the proposed programme budget outline for the biennium 2004-2005 (A/57/85).

15. The representative of the Secretary-General introduced the proposed programme budget outline for the biennium 2004-2005 and responded to the questions raised during the Committee's consideration of the report.

Discussion

16. The Committee welcomed the timely submission of the outline and reaffirmed that in the consideration of the outline and through the entire budgetary process, provisions of General Assembly resolution 41/213 of 19 December 1986 should be fully respected. Support was expressed for the priorities outlined in the document, which reflected those priorities set out in the medium-term plan for the period 2002-2005 (A/55/6/Rev.1).[1]

17. It was noted that the outline provided a preliminary indicative estimate of requirements for the period. However, the view was expressed that further clarifications were required on several aspects. Support was expressed for the continued implementation of the United Nations Millennium Declaration (General Assembly resolution 55/2). It was observed that the outline did not clearly reflect any movement of resources from low-priority to high-priority areas. Queries were raised as to the emphasis on the areas of human rights and humanitarian affairs and common support services, as reflected in terms of percentage resource change outlined in the annex to document A/57/85. With regard to the level of the outline, concern was expressed that proposals reflected the addition of new mandates without reprioritizing existing programmes. It was noted that the proposed budget outline contained no concrete proposals for efficiency measures and did not reflect the impact of full implementation of regulation 5.6 of the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation. It was stated that it was not clear whether the proposals reflected a continued commitment to budgetary discipline and the impact of the implementation of reform initiatives, including further streamlining. In particular, concern was expressed regarding the need to take into account expected efficiency gains arising from the implementation of results-based budgeting and human resource management reform. The view was expressed that the amount of $44.9 million of the $59.3 million for strengthening the security and safety of United Nations premises should be deducted as one-time costs in 2002-2003. It was noted that even the current service cutbacks, which negatively affected the quality of service delivery, could not be sustained in the long run without becoming counterproductive, and efforts should be made to bring services to a level that would not prejudice programme delivery any further.

18. Clarification was sought regarding the full provision for new posts. It was noted that the amount for full provision in 2004-2005 for posts newly approved in 2002-2003 resulted from the application of current standard methodology. The view was expressed that the practice of budgeting for newly created professional posts on a 50 per cent basis should be continued so as to take into account the time necessary for recruitment. It was stated that when new Professional posts were proposed the Secretary-General should provide information on their full financial impact in subsequent budget periods. At the same time, support was expressed regarding the consideration of costing future new post proposals on a full-cost basis so as to avoid the delayed impact of growth in subsequent bienniums. In particular, it was asked whether the ongoing human resource reform initiatives would reduce recruitment delays to levels consistent with such a methodology. On the other hand, the view was also expressed that the proposal for full budgetary provisions for new posts should be commended.

19. With regard to provisions for information technology and common services, it was stated that no efficiency savings appeared to be identified. The view was expressed that there was no basis for including the amount of $29.8 million for restoring funds that were not approved for the programme budget for 2002-2003. It was also stated that the General Assembly had set a prerequisite for significant investment in information technology, i.e., a clear, coherent strategy. Clarifications were sought regarding the relationship between the Integrated Management Information System and other information technology. Queries were raised regarding the implications of supplementary information technology and common services for conference services. It was noted that proposals should include sufficient resources for conference services to bring the services to a level that would meet the requirements of Member States and to rectify the current circumstances, especially for meetings of the regional groups. It was also stated that it was not clear how proposed increases in common services related to programme priorities.

20. With regard to special political missions, it was noted that the consideration of the inclusion of these activities in the regular budget was an important issue, and that a different treatment, similar to that for the financing of peacekeeping operations and international tribunals, might be considered. The question was raised as to why the difficulties related to the treatment of these activities had not been brought to the attention of the Committee earlier. Concern was expressed as to how such missions could be planned under the regular budget when they were not treated in accordance with the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation. It was recalled that the General Assembly had previously taken a decision on that issue. It was acknowledged that special political missions were unique, but it was noted that their inclusion in the regular budget enhanced predictability and required better estimates. The view was expressed that these activities should continue to be included in the regular budget. It was also stated that consideration of this issue could be flexible. It was noted that the provision for special political missions in the outline for the biennium 2004-2005 was proposed at a level of approximately twice that approved for the current biennium. It was also observed that the circumstances of the past year had been exceptional. Concern was expressed regarding the proposed level of resources estimated in the outline for special political missions. It was stated that any provision for these activities should be realistic and transparent.

21. The view was expressed that several proposals in the outline suggested a return to an era of ever-increasing budgets, when budget decision-making was focused on how much to add to the last budget.

22. It was considered that sustained reform and continuous improvement could and would have a significant favourable impact on the resource requirements of the Organization.

23. Support was expressed for the reflection of the approximation of inflation rates on the proposals in the outline. It was also noted that exchange rates could not be reliably predicted at this stage for the time periods covered by the outline.

24. Support was expressed for the recommendation to set the size of the contingency fund at a level of 0.75 per cent for the biennium 2004-2005.

Conclusions and recommendations

25. **The Committee considered the outline, in accordance with General Assembly resolution 41/213, annex I, using as a framework the four elements listed in paragraph 1 of the report of the Secretary-General, namely:**

(a) **Preliminary estimate of resources to accommodate the proposed programme of activities during the biennium;**

(b) **Priorities, reflecting general trends of a broad sectoral nature;**

(c) **Real growth, positive or negative, compared with the previous budget;**

(d) **Size of the contingency fund expressed as a percentage of the overall level of resources.**

26. **The Committee took note of the report of the Secretary-General on the proposed programme budget outline for the biennium 2004-2005 (A/57/85) and recommended that the General Assembly should give further consideration to all the aspects contained in the proposed programme budget outline, in the light of the discussions reported above and taking into account the following:**

(a) **The preliminary estimates should be adequate for the full implementation of all mandated programmes and activities;**

(b) **The Committee noted that in September the Secretary-General would submit reform proposals to the General Assembly at its fifty-seventh session pertaining to the continued process of strengthening the Organization, and that any implications that the reform would have for the proposed programme budget outline would be addressed at the fifty-seventh session of the General Assembly;**

(c) **The Committee recalled resolution 53/206, in which the General Assembly endorsed the proposal of the Secretary-General that provision should be made in the budget outline for expenditures for special political missions related to peace and security expected to be extended or approved in the course of the biennium;**

(d) **While noting that the Secretary-General would reflect, in his budget submission, additional cost-effectiveness measures and simplified procedures, the Committee recommended that the Secretary-General's review of possible obsolete activities should remain within the context of relevant Regulations and**

Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation;

(e) The Committee recommended approval of the priorities contained in paragraph 11 of the report of the Secretary-General on the proposed programme budget outline for 2004-2005;

(f) The Committee recommended also that the size of the contingency fund should be 0.75 per cent of the budget outline total and reaffirmed resolution 41/213, in particular the provision requiring reprogramming of activities when the contingency fund is fully utilized.

B. Efficient and effective measures for management improvement

27. At its 18th and 19th meetings, on 24 and 25 June 2002, the Committee considered the report of the Secretary-General on efficient and effective measures for management improvement (E/AC.51/2002/2). The representative of the Secretary-General introduced the report and responded to queries raised during the Committee's consideration of the report.

Discussion

28. It was noted that the report of the Secretary-General was comprehensive in scope and provided a useful overview of work in progress with regard to measures for management improvement, both within the United Nations Secretariat and across the common system of organizations. An illustrative sample of measures taken by organizations covered seven areas of management innovations: enhancement of monitoring capacity and performance measurement; leveraging technology; streamlining rules, processes and procedures; strengthening common services; improving human resources management; strengthening financial management; and enhancing accountability and delegation of authority. Specific efforts had been taken in the Department of Management of the United Nations Secretariat and in the High-level Committee on Management (HLCM) of the United Nations System Chief Executives Board for Coordination (CEB) to put in place mechanisms for cooperation, learning and sharing of experience. HLCM had a particular role to play in the development of a strategy for cooperation and coordination in management improvement measures, in aggregating and analysing information and in establishing good management practice.

29. It was also noted that management improvement measures were an integral part of the Secretary-General's initiatives for reform of the Organization. Productivity remained a central concern. Monitoring the impact of improvements, to ensure that change actually happened in a verifiable way, was another critical concern. Virtually all of the organizations of the United Nations common system were learning how to tie their administrative and management activities into the overall framework of a results-based approach.

30. Delegations expressed appreciation for the manner in which a broad array of management improvement initiatives had been presented against a background of change management in the organizations. It was necessary, however, to ensure that sound coordination mechanisms were in place to ensure that good ideas were widely disseminated and that duplication of effort was avoided. At the same time,

monitoring tools were needed to track progress in the different areas of work. The proposed progress and impact-reporting system being developed by the Management Policy Office of the Department of Management would be useful in that regard. A parallel mechanism was the productivity-knowledge gateway, which focused on assessing individual and team-based productivity measures.

31. Delegations supported rigorous efforts towards achieving an electronic United Nations. Many organizations had made a considerable investment in information and communications technology, and it was important that every effort be made to share best practices. The role of such technology was central to future management improvements. Some difficulties had been encountered in the efforts to more closely integrate information and communications technology platforms across organizations, but the HLCM network and the United Nations information and communications technology strategy were addressing those issues.

32. A number of delegations observed that future work on management improvement measures needed to focus on both their quantitative and qualitative impact. The view was expressed that the report had presented a positive picture without examining the shortfalls or negative aspects of improvement measures. The view was also expressed that the nature of the report was more quantitative than qualitative. While a considerable amount of work had been undertaken by the United Nations and the other organizations of the common system, specific efforts should continue towards developing more coherent approaches and a more detailed impact assessment of improvement measures. Delegations acknowledged the difficulty of pinning down real results, for example, the results of introducing new processes or technology. It was not sufficient to claim that management improvement measures were effective or efficient: the results of change had to be demonstrated by comparing the situation before and after specific projects were carried out. On the other hand, delegations expressed the view that there had been noticeable improvements in such areas as the streamlining of rules, the introduction of such procedures as the new Galaxy system for recruitment, placement, promotion and mobility, and the development of management indicators (the Key Item Management Reporting System). It would be useful to emphasize the linkage between management improvement measures and delegating authority to programme managers while holding them accountable for decisions. There again, monitoring would be crucial.

33. Appreciation was expressed for the efforts of the Secretary-General to use the High-level Committee on Management of CEB to stimulate the exchange of experience and good management practice. Within the United Nations, the role of the Senior Management Group, the Steering Committee on Reform and Management and the Management Policy Committee were critical. The use of inter-agency networking and the development of the progress and impact reporting system were broadly supported: in future, emphasis would have to be placed on measuring actual improvement rather than on simply describing the intent of management improvement initiatives.

Conclusions and recommendations

34. **The Committee took note with appreciation of the report of the Secretary-General on efficient and effective measures for management improvement (E/AC.51/2002/2). The Committee was of the view that a broad range of initiatives had been presented in a useful format. At the same time, there**

remained scope for more rigorous analysis of the specific impact of improvement measures and for analysis of the problems and challenges faced by the organizations of the system. The Committee welcomed the examples cited in the report in regard to the sharing of experience and good management practice.

35. **The Committee affirmed its support for the mechanisms for inter-agency cooperation and networking that had been placed under the aegis of the High-level Committee on Management of CEB. It also recommended that the work of the Management Policy Committee of the Department of Management should go forward with regard to the development of the progress and impact reporting system, both as a monitoring tool and as a means of assessing more rigorously the impact of management improvement measures. The Committee felt that the strategy proposed in the report for intensifying inter-agency knowledge-sharing and assessment of the results of management improvement measures should receive priority so that future reports would be more focused on impact analysis.**

C. Different methodologies that might be used to correct the geographical imbalance in hiring consultants

36. At its 19th meeting, on 25 June 2002, the Committee considered the note by the Secretary-General on progress in the preparation of the report of the Secretary-General on different methodologies that might be used to correct the geographical imbalance in hiring consultants (E/AC.51/2002/3). The representative of the Secretary-General introduced the report.

Discussion

37. The view was expressed that it would have been preferable for the Secretariat to present not one but several options for discussion on this issue. Divergent views were expressed concerning the applicability of a geographical quota as a proper tool for achieving geographical balance for consultants and individual contractors.

38. The view was expressed that since it constituted a rather minor expense of the budget of the Organization, the search for a means to solve the problem of the imbalance in hiring consultants should not be a priority. Other views were expressed to the effect that, on the contrary, the issue was a matter of principle regardless of the costs involved.

39. It was observed that information on why certain Member States were not represented was not available.

40. The view was also expressed that there was some doubt about the results of the calculation as per the adopted methodologies, which identified some countries as overrepresented when they might not be so.

41. Divergent opinions were expressed on whether an in-depth multi-year study proposed by the Secretary-General should take place. The view was also expressed that a study was necessary but that it should be completed in a shorter period of time. It was noted that additional information should be provided, such as the ratio of postulants to posts, in order to allow a broader analysis of the context of the imbalance in hiring consultants.

42. The view was expressed that greater efforts should be made by the Secretariat to achieve geographical balance among consultants and individual contractors.

43. Delegations expressed the view that due regard should be given to merit in the hiring of consultants and contractors. The Secretariat assured the Committee that current practice and procedure would be maintained when giving consideration to correcting the geographical imbalance.

Conclusions and recommendations

44. **The Committee took note of the note by the Secretary-General on progress in the preparation of the report of the Secretary-General on different methodologies that might be used to correct the geographical imbalance in hiring consultants (E/AC.51/2002/3).**

45. **The Committee recommended that the Secretariat make greater efforts to ensure geographical balance among qualified consultants and individual contractors, and that the General Assembly further consider the matter at its fifty-seventh session in the context of the relevant item.**

Chapter III

Programme questions

A. Programme planning

(Item 4 (a))

Programme performance of the United Nations for the biennium 2000-2001

46. At its 5th and 6th meetings, on 11 and 12 June 2002, the Committee for Programme and Coordination considered the report of the Secretary-General on the programme performance of the United Nations for the biennium 2000-2001 (A/57/62).

47. The Under-Secretary-General for Internal Oversight Services introduced the report of the Secretary-General and responded to questions raised during the Committee's consideration of it.

Discussion

48. Appreciation was expressed for the report on programme performance of the United Nations for the biennium 2000-2001, which was considered to be a comprehensive, informative and useful reference document on the performance of the Secretariat. The quality of the report with regard to clarity and methodology was commended; the report more closely resembled what was wanted and enabled Member States to review each section easily. The usefulness of the report was considered to be due to its focus on numerical information and the comparative picture regarding programme execution. With the introduction of results-based budgeting, it was felt that future reports would include more analysis and qualitative tables.

49. The average implementation rate of 83 per cent of the programmed outputs achieved by the Secretariat was acknowledged as realistic and reasonable. The reporting modalities in the United Nations had been considerably improved with the use of the Integrated Monitoring and Documentation Information System, and it was deemed desirable to extend the system to evaluations.

50. It was noted with concern that not all programme managers accorded monitoring and reporting the required priority. Departments were encouraged to employ the programme monitoring information on a continuous basis throughout the biennium to aid and improve programme management.

51. It was also noted with concern that the lowest implementation rate was observed in programmes related to development, and that the report did not provide precise and correct information. Concern was also expressed that some activities that were not mandated in the medium-term plan were implemented.

52. Concerns were raised over the number and nature of the terminations reported. There had been some increase in the number compared with the previous biennium, and that trend should be closely watched so that the causes could be addressed. It was observed that many of the terminations were decided by the Secretariat and was understood that those decisions were adopted in accordance with the Regulations

and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation (ST/SGB/2000/8). It was accepted that activities could be carried forward to the next biennium if they were still relevant, but should then be given priority for completion in that biennium. It was stated that the qualitative evaluation of the Millennium Declaration was focused only on accomplishments, and that in the future there should be a more objective presentation dealing with the objectives and indicators of achievement in connection with the activities related to the Millennium Declaration.

53. It was recognized that the programme performance report for the current biennium would be more complex with the introduction of results-based budgeting, given that more emphasis would be on qualitative reporting. Support was expressed for the approach taken by the Office of Internal Oversight Services in conducting the next reporting exercise, and the need for training was emphasized in order to assist programme managers in fulfilling their reporting responsibilities.

54. With regard to the results-based budgeting format, there was still a need to refine the indicators of achievement and expected accomplishments and to strengthen the linkage between them. It was observed that some texts in the quantitative tables were lengthy and did not convey what had been accomplished. Attention should be paid to the correlation between the reported accomplishment realized and the indicators of achievement. Further improvement in the reporting format was anticipated.

55. The presentation of the conclusions drawn from the qualitative assessments by the Millennium Declaration theme was discussed. Several observations were made with regard to the differences in the implementation rates of individual programmes. It was noted that a number of the programmes with implementation rates of less than 80 per cent were those that affected developing countries, particularly those in Africa.

Conclusions and recommendations

56. **The Committee noted the implementation rate achieved during the biennium as well as the accomplishments realized and commended programme managers and staff for their initiative and resourcefulness in programme management in response to legislative mandates. In this regard, the Committee emphasized the need to respect all the relevant resolutions of the General Assembly, including that concerning delegation of authority.**

57. **The Committee recommended that future performance reports provide more detailed information in the event of a relatively low implementation rate.**

58. **The Committee noted the progress achieved in developing the modalities and the format of programme performance reporting and the efforts to strengthen the expertise and commitment of programme managers. It urged all programme managers, without exception, to fulfil their responsibilities with respect to self-evaluation and monitoring. It suggested that consideration be given to including in managers' performance appraisals a standard personal objective to ensure full and efficient compliance with those requirements and to develop their use as a management and accountability tool.**

59. The Committee emphasized that programme monitoring should be continuous and comprehensive and that it should lead to the appropriate legislative and management adjustments to ensure full implementation of all mandated programmes in accordance with the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation.

60. The Committee recommended that, in response to General Assembly resolution 53/207 of 18 December 1998, the qualitative evaluation be improved in a comprehensive manner in terms of objectives, strategies, expected accomplishments and indicators of achievement, taking into account Assembly resolution 55/231 of 23 December 2000.

61. The Committee noted the view expressed in paragraph 70 of the report of the Secretary-General on the programme performance of the United Nations for the biennium 2000-2001 that considerable effort was still required to muster sufficient expertise in translating programmatic goals into clear and comprehensive indicators of expected accomplishments, achievement and accomplishments realized, and that the expertise of United Nations staff should be solid enough to develop strong linkages between expected accomplishments, indicators of achievement and the accomplishments reported.

B. Proposed revisions to the medium-term plan for the period 2002-2005

(Item 4 (b))

Programme 1
Political affairs

62. At its 9th meeting, on 17 June 2002, the Committee considered the proposed revisions to the medium-term plan for the period 2002-2005. It had before it proposals in respect of programme 1, "Political affairs" (A/57/6 (Prog. 1) and Corr.1).

63. The representative of the Secretary-General introduced programme 1 and responded to queries raised during the Committee's consideration of the programme.

Discussion

64. Support was expressed for the proposed revisions to the medium-term plan in respect of programme 1, as they were in general, in conformity with legislative mandates.

65. The view was also expressed that the medium-term plan formed the basis for preparing the biennial programme budgets and that the programme budgets should thus be based on the medium-term plan, and not the reverse.

66. It was recognized that the Department of Political Affairs was the lead department for implementation of a number of General Assembly and Security Council resolutions, including, inter alia, the ones on counter-terrorism, which entailed additional tasks for the Department. It was underscored that other parts of

the Secretariat, such as the Office of Legal Affairs, the Department for Disarmament Affairs and other members of the Executive Committee on Peace and Security, should also be fully involved, and their respective roles should be clearly defined. It was pointed out that coordination among those departments was of paramount importance to ensure coherence and to avoid duplication of activities.

67. Support was expressed for the efforts of the African people in achieving peace and development in the African continent. The view was expressed that the Organization should play a greater role in efforts for achieving peace and development in Africa.

68. The view was expressed that mandates for the holding of elections were the prerogative of the General Assembly and not of the Security Council. Concerning the indicators of achievement for subprogramme 2, "Electoral assistance", concern was expressed that transparency in the electoral processes of Member States requesting assistance for the conduct of elections was difficult to measure, and could be subjected to value judgement.

69. It was observed that while there were several expert panels and monitoring groups, established by the Security Council, not all of them were mentioned in the proposed revisions.

70. In discussing the proposed revisions under subprogramme 4, "Decolonization", it was stated that the expected accomplishments and the indicators of achievement shown in the existing medium-term plan were more complete and comprehensive than the proposed revisions.

Conclusions and recommendations

71. **The Committee recommended that the General Assembly approve the revisions proposed by the Secretary-General to programme 1, Political affairs, of the medium-term plan for the period 2002-2005, subject to the following modifications:**

Paragraph 1.4

Replace the paragraph with the following:

"In its capacity as the lead department on the subject of terrorism, the Department of Political Affairs will work with the Centre for Crime Prevention and Criminal Justice and with other relevant departments within the Secretariat in the implementation of Security Council resolution 1373 (2001)".

Paragraph 1.12

Retain the original wording of paragraph 1.11 of the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1.

Paragraph 1.15

In the third sentence, delete the words "to the Counter-Terrorism Committee and its work, as well as".

Paragraph 1.15

Delete the words "on Afghanistan".

Paragraph 1.15

Replace the Security Council resolution number "1363 (2001)" with the number "1419 (2002)".

Paragraph 1.23

Retain the original wording of paragraph 1.22 of the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1.

Paragraph 1.24

Retain the original wording of paragraph 1.23 of the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1.

Paragraph 1.25

Retain the original wording of paragraph 1.24 of the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1.

Paragraph 1.29

Replace the paragraph with the following:

> "An indicator of achievement would be an increase in the level of dialogue, engagement and support from the relevant international community actors for the subprogramme's objectives".

Legislative mandates

Subprogramme 1, Prevention, control and resolution of conflicts

General Assembly resolutions

Add resolution 56/88 on measures to eliminate international terrorism.

Security Council resolutions

Add resolution 1373 (2001) on measures to eliminate international terrorism.

Subprogramme 4, Decolonization

General Assembly decision

Add decision 56/410 on the question of the Falkland Islands (Malvinas).

72. The Committee also recommended that the General Assembly, at its fifty-seventh session, further consider proposals on paragraph 1.13 of the programme.

73. The Committee further recommended that the Secretary-General provide further information to the General Assembly at its fifty-seventh session on the applicability of regulation 4.13 and rule 104.8 of the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the

Monitoring of Implementation and the Methods of Evaluation with regard to the revisions to the list of legislative mandates in programme 1.

Programme 2
Disarmament

74. At its 9th meeting, on 17 June 2002, the Committee considered the proposed revisions to the medium-term plan for the period 2002-2005. It had before it proposals in respect of programme 2, Disarmament (A/57/6 (Prog. 2)).

75. The representative of the Secretary-General introduced programme 2 and responded to queries raised during the Committee's consideration of the programme.

Discussion

76. Support was expressed for the proposed revisions to the medium-term plan under programme 2, which reflected action taken by the General Assembly during its fifty-sixth session in its resolutions 56/24 T on multilateral cooperation in the area of disarmament and non-proliferation and global efforts against terrorism and 56/24 V on the illicit trade in small arms and light weapons in all its aspects, as well as changes in the programme narrative, in line with General Assembly resolution 56/253.

77. Satisfaction was expressed with the new indicator of achievement proposed under subprogramme 2, Weapons of mass destruction, contained in paragraph 2.17 (d). The view was expressed that that indicator of achievement could be easily measured and that it was appropriate to include it under the subprogramme. Queries were raised about the additional expected accomplishments and indicators of achievements proposed and about the method of measurement to quantify satisfaction by States Parties. The view was also expressed that the proposed revisions under programme 2 should be consistent with all the provisions of General Assembly resolutions 56/24 T and 56/24 V.

Conclusions and recommendations

78. **The Committee decided to recommend that the General Assembly approve the revisions proposed by the Secretary-General to programme 2, Disarmament, of the medium-term plan for the period 2002-2005, subject to the following modifications:**

Paragraph 2.16 (a)

Retain the original wording of paragraph 2.16 (a) of the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1.

Paragraphs 2.19 (a), 2.19 (b) and 2.23 (d)

In the French version, include the words "small arms" before the words "light weapons" in every instance where the latter words appear.

Paragraph 2.14 (d)

Replace the subparagraph with the following to reflect the relevant provision of General Assembly resolution 56/24 T:

> "Assist Member States, at their request, in their efforts in the area of disarmament and non-proliferation in order to help maintain international peace and security and to contribute to global efforts against terrorism".

Paragraph 2.16 (c)

Replace the subparagraph with the following to reflect the relevant provision of General Assembly resolution 56/24 T:

> "Enhanced multilateral cooperation in the area of disarmament and non-proliferation, within existing mandates, as a contribution to the maintenance of international peace and security and the global efforts against terrorism".

Paragraph 2.17 (a)

Delete the last sentence, reading "This would include sessions of the Preparatory Committee for the 2005 Review Conference and ad hoc meetings".

Paragraph 2.17 (d)

Replace the subparagraph with the following to reflect the relevant provision of General Assembly resolution 56/24 T:

> "Greater awareness of States of the need for progress in the area of disarmament and non-proliferation in order to help maintain international peace and security and to contribute to global efforts against terrorism".

Paragraph 2.23 (a)

Replace the words "Further development" with the words "Improved functioning".

Paragraph 2.23 (d)

Delete the words "conventional disarmament initiatives, including".

Programme 3
Peacekeeping operations

79. At its 9th meeting, on 17 June 2002, the Committee considered the proposed revisions to the medium-term plan for the period 2002-2005. It had before it proposals in respect of programme 3, Peacekeeping operations (A/57/6 (Prog. 3)).

80. The representative of the Secretary-General introduced programme 3 and responded to queries raised during the Committee's consideration of the programme.

Discussion

81. General support was expressed for the proposed revisions to the medium-term plan under programme 3 since the proposed revisions conformed to legislative mandates. The establishment of mine action coordination as a separate subprogramme was welcomed. It was noted that the proposed indicators of achievement were in general relevant and quantifiable. Queries were raised, however, on some revisions of expected accomplishments and indicators of achievement made on the basis of the programme budget for the biennium 2002-2003.

82. Reference was made to the expected accomplishments and indicator of achievement related to gender issues in paragraphs 3.7 and 3.8 of subprogramme 1, Operations. Their placement under that subprogramme was questioned since gender mainstreaming was a cross-cutting issue and should have been addressed either in the overall orientation or in the strategy of the programme.

83. The commitment of the Department of Peacekeeping Operations to implement its programme of work was welcomed. Given the strengthening of the capacity of the Department to fulfil its mandate, it was pointed out that more results would be expected. It was also emphasized that, in strengthening the capacity of the Department, due regard should be given to geographical balance.

84. Queries were raised about the degree of completion of missions' start-up kits and on measures to be taken to increase the number of Member States contributing to the standby arrangements, referred to in paragraphs 3.12 and 3.17, respectively.

Conclusions and recommendations

85. **The Committee recommended that the General Assembly approve the revisions proposed by the Secretary-General to programme 3, Peacekeeping operations, of the medium-term plan for the period 2002-2005, subject to the following modifications:**

Paragraph 3.3

After the last sentence, insert a new sentence reading "Special attention will also be given to an increased understanding and recognition of gender issues and geographical balance in peacekeeping operations".

Paragraph 3.7

Delete the words "and an increased understanding and recognition of gender issues in peacekeeping operations" and delete the subsequent explanation provided in italic type within square brackets.

Paragraph 3.8

Delete the words "and the extent to which gender issues are identified and addressed in peacekeeping missions".

Paragraph 3.9

After the words "as well as other activities", insert the words "including training".

Paragraph 3.11

Replace the words "increased operational readiness through better planning and deployment" with the words "improved and increased operational readiness through effective, expeditious and coordinated planning and deployment".

Paragraph 3.12

- **After the words "Indicators of achievement would include", insert the words "a reduction in the time lag between the adoption of resolutions and the deployment of civilian personnel and equipment to field missions".**
- **Replace the words "mission start-up kits" with the words "strategic deployment stocks modules".**

Paragraph 3.16

After the words "Expected accomplishments would include", insert the words "rapid response in the deployment and" before the words "the effective establishment of trained military and civilian police components".

Programme 5
Legal affairs

86. At its 9th meeting, on 17 June 2002, the Committee considered the proposed revisions to the medium-term plan for the period 2002-2005. It had before it proposals in respect of programme 5, Legal affairs (A/57/6 (Prog. 5)).

87. The representative of the Secretary-General introduced programme 5 and responded to queries raised during the Committee's consideration of the programme.

Discussion

88. Satisfaction was expressed with the services rendered by the Office of Legal Affairs to the Commission on the Limits of the Continental Shelf. Queries were raised on the revisions related to subprogramme 4, Law of the sea and ocean affairs. The view was expressed that General Assembly resolutions 56/12 on oceans and the law of the sea and 56/13 on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks did not contain specific mandates to warrant the revisions proposed under paragraphs 5.27 and 5.28. It was emphasized that the services and assistance to be given to States Parties to the Convention should be limited to those States which had requested assistance.

89. Clarification was sought concerning the ongoing substantive support provided to the Preparatory Commission for the International Criminal Court as indicated in paragraph 5.21 of subprogramme 3, Progressive development and codification of international law, in the light of the recent ratification of the statute by the requisite number of States Parties.

90. Reference was made to paragraph 66 of the report of the Office of Internal Oversight Services (E/AC.51/2002/5) regarding the United Nations Commission on International Trade Law under subprogramme 5, Progressive harmonization and unification of the law of international trade, which, inter alia, reported that with the exception of the addition of a P-4 post in 2001, staff resources had remained at the 1968 level. In the light of that observation, the revisions contained in paragraph 5.35 for the strengthening of the secretariat of the Commission, in view of its increased workload, were welcomed. The view was expressed that the strengthening could be effected by utilizing existing resources. However, given the nature of the work of various organizational units in the Office of Legal Affairs, doubts were expressed whether the strengthening could be achieved within existing resources.

91. Clarification was sought concerning the impact of the deleted mandates previously referenced under subprogramme 3.

Conclusions and recommendations

92. **The Committee recommended that the General Assembly approve the revisions proposed by the Secretary-General to programme 5, Legal affairs, of the medium-term plan for the period 2002-2005, subject to the following modifications:**

Paragraph 5.12

Retain the original wording of paragraph 5.12 of the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1.

Paragraph 5.20

Retain the original wording of paragraph 5.20 of the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1.

Paragraph 5.21

In the second sentence, delete the words "and the Preparatory Commission for the International Criminal Court", and in the subsequent explanation of change provided in italic type in square brackets, delete the reference to General Assembly resolution 56/85.

Paragraph 5.27

Retain the original wording of paragraph 5.27 of the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1.

Paragraph 5.28

- **In the third sentence, before the words "in particular developing States", insert the words "at their request".**
- **In the last sentence, after the words "consultations with the States parties will be carried out", insert the words "in accordance with the provisions of General Assembly resolution 56/13" and delete the rest of the sentence.**

Paragraph 5.29

At the end of the last sentence, add a new sentence reading "Such action will be assisted by more effective collaboration and coordination between the relevant parts of the United Nations Secretariat and the United Nations as a whole, and improved coordination at the inter-agency level, as requested in General Assembly resolution 56/12, paragraph 49".

Paragraph 5.35

Replace the second sentence with the following: "In order to enable the Branch to carry out the work programme of the Commission, it is necessary to implement the request by the General Assembly in its resolution 56/79".

Programme 7
Economic and social affairs

93. At its 10th meeting, on 18 June 2002, the Committee considered the proposed revisions to programme 7, Economic and social affairs, of the medium-term plan for the period 2002-2005 (A/57/6 (Prog. 7)).

94. Representatives of the Secretary-General introduced the proposed revisions and responded to queries raised during the Committee's consideration of the revisions.

Discussion

95. General support was expressed for the proposed revisions.

96. Appreciation was expressed for the inclusion of the United Nations Millennium Declaration and the report of the Secretary-General on the road map towards the implementation of the Declaration as new mandates, for references to the International Conference on Financing for Development, the Second World Assembly on Ageing and the World Summit on Sustainable Development, and for references to other conferences that would provide further legislative authority for the programme.

97. The view was expressed that some of the narratives proposed for deletion, particularly in paragraphs 7.1 and 7.3, should be retained. It was considered that a reference to the Third United Nations Conference on the Least Developed Countries should have been included under paragraph 7.1.

98. The inclusion in the revisions to the programme of the expected accomplishments and indicators of achievement approved by the General Assembly under section 9 of the programme budget for the biennium 2002-2003 was questioned on the grounds that most of them were designed to evaluate Member States' performance instead of that of the Secretariat.

99. The view was expressed that in certain instances there was a missing link between the expected accomplishments and the indicators of achievement. It was further considered that a number of indicators of achievement were of a purely quantitative nature and needed to be reformulated in order to emphasize the qualitative nature of the change to be measured.

100. Support was expressed for the proposed revised expected accomplishment under paragraph 7.13 (c), regarding the establishment of an expanded network for information exchange and communication with Governments and civil society. The view was expressed that the indicator of achievement under paragraph 7.14 (g) should make reference to technical services provided in implementation of the Beijing Declaration.

101. It was stated that the implementation of centralized and systematized databases as required by the report of the Committee of the Whole of the twenty-third special session of the General Assembly would contribute to the accomplishment of the goals of subprogramme 2, avoiding unnecessary duplication and reaching important sectors of the population.

102. It was proposed to retain the following narrative slated for deletion:

(a) Paragraph 7.33 (a), "of developing countries, in particular the least developed countries, and economies in transition to mobilize financial resources for development by advancing the outcomes of the Third United Nations Conference on the Least Developed Countries and the High-level International Intergovernmental Event on Financing for Development;

(b) Paragraph 7.33 (d), "thus, the subprogramme would contribute to the formulation of new goals and strategies for long-term development";

(c) Paragraph 7.34, "a constructive dialogue on macroeconomic policy in the General Assembly and the Economic and Social Council through systematic surveys of the global economy and the provision of substantive support to the policy processes";

(d) Paragraph 7.35, "a percentage increase in the number of consensus decisions reached and action taken by the United Nations, the international community in general and Governments on measures to accelerate growth and development in developing countries and countries with economies in transition, including implementation of national, regional and international efforts to make the global financial system more responsive to the challenges of development that emanate from the high-level event on financing for development and the Third United Nations Conference on the Least Developed Countries".

103. It was also proposed that a number of the revised expected accomplishments contained in paragraph 7.34 and indicators of achievement contained in paragraph 7.35 be reviewed because their current wording did not convey the idea of progress made.

104. The establishment of a new subprogramme 9, Sustainable forest development, was welcomed. Doubts were expressed whether the number of high-level ministerial segment meetings, including policy dialogues cited as an indicator of achievement under paragraph 7.43 (c), could be considered as an adequate measure of the accomplishments of the subprogramme. The view was expressed that references to the question of establishing an effective financing mechanism and to the multi-year programme of work should have been included under expected accomplishments and indicators of achievement under paragraphs 7.42 and 7.43, respectively.

105. Support was expressed for the fact that the responsibility for the implementation of subprogramme 9 remained with the secretariat of the United

Nations Forum on Forests. It was stressed that no additional tasks should be incorporated into the programme of work adopted by the Forum.

106. The view was expressed that the agreed outcome of the recent International Conference on Financing for Development required sustained follow-up on the part of the United Nations system. It was considered that such follow-up could be accomplished by establishing a separate new subprogramme under programme 7.

Conclusions and recommendations

107. **The Committee recommended that, following the endorsement of the Monterrey Consensus by the General Assembly, as adopted by the International Conference on Financing for Development on 22 March 2002, the Secretary-General prepare a proposal for a new subprogramme on financing for development under programme 7, Economic and social affairs, of the medium-term plan for 2002-2005, for consideration by the General Assembly at its fifty-seventh session.**

108. **The Committee recommended that, in accordance with the outcome of the World Summit on Sustainable Development, to be held in Johannesburg, South Africa, in August 2002, the Secretary-General submit revisions to relevant subprogrammes for the consideration of and action by the General Assembly at its fifty-seventh session.**

109. **The Committee recommended that the General Assembly approve the revisions proposed by the Secretary-General in programme 7, Economic and social affairs, of the medium-term plan for the period 2002-2005, with the following modifications:**

Paragraph 7.1

- **Retain the original wording of the second sentence of paragraph 7.1 of the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1.**
- **In the third sentence, after the words "United Nations to", insert the word "meeting", and, after the words "everywhere and to" insert the word "effectively".**
- **In the fifth sentence, after the word "consensus", insert the words "strengthening partnerships of Governments of the North and South on the one hand and between major groups or relevant stakeholders on the other".**
- **In the sixth sentence, replace the words "those three areas" with the words "those four areas".**

Paragraph 7.2

- **Towards the end of the first sentence, before the words "the Millennium Declaration (2000)", insert the words "the special session of the General Assembly on HIV/AIDS (2001) and the special session of the General Assembly on children (2002)".**

- At the end of the first sentence, after the words "the follow-up to the outcome of the Millennium Summit (2001)", add the words "and the Third United Nations Conference on the Least Developed Countries".
- Replace the last sentence with the following: "In addition, it is expected that the decisions of the General Assembly on the outcome of the Monterrey Consensus, adopted at the International Conference on Financing for Development, the International Plan of Action on Ageing, adopted at the Second World Assembly on Ageing, and the outcome of the World Summit on Sustainable Development, to be held in 2002, will provide further legislative authority to the programme".

Paragraph 7.3

- Retain the original wording of the second sentence of paragraph 7.3 of the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1, up to the word "development", and delete the words "and the integrated follow-up to global conferences".
- Revise the new text of paragraph 7.3, which reads "in particular the integrated and coordinated implementation and follow-up of the outcomes of the major United Nations conferences" to read "in particular the implementation and follow-up of the outcomes of the United Nations conferences and summits in the economic and social fields".

Paragraph 7.6 (b)

- After the words "United Nations", insert the words "in conformity with the rules of procedure of the Economic and Social Council".
- Replace the words "diverse stakeholders" with the words "diverse institutional stakeholders".
- Delete the words "and by adapting the Council's working methods to new requirements".

Paragraph 7.7 (d)

- After the word "Assembly", insert the words "in accordance with its resolution 56/76".
- After the word "participation", insert the words "in accordance with the established rules of procedure and practices of the General Assembly and the Economic and Social Council with respect to the representation".
- Replace the word "universities" with the word "academia".

Paragraph 7.7 (f)

Replace paragraph 7.7 (f) with text similar to paragraph 21 of the annex to General Assembly resolution 55/285, as follows: "Making more use of the regular consultations provided for in paragraph 43 of the annex to General Assembly resolution 51/241, including between the President of the General Assembly and the President of the Security Council and the Economic and Social Council, the Secretary-General will provide those meetings with

secretarial support, as appropriate, including written information to Member States through the chairmen of the regional groups".

Paragraph 7.8

Retain expected accomplishments (a), (b), (c), (d) and (e) as approved in the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1.

Paragraph 7.9 (a)

Replace the words "and relevant issues" with the words "concerning economic and social development issues".

Paragraph 7.9 (b)

Replace paragraph 7.9 (b) with the following: "Report by Member States that dialogues, round-table discussions and panels are informative and relevant and contribute to intergovernmental deliberations, which should be disseminated, including through the Internet".

Paragraph 7.9 (c)

At the end of paragraph 7.9 (c), add the words "as appropriate".

Paragraph 7.9 (d)

Revise paragraph 7.9 (d) to read "Report by Member States that inputs from concerned parts of the Organization and the system as a whole are relevant, coordinated and timely".

Paragraph 7.9 (f)

Delete the words "and others".

Paragraph 7.9 (g)

Revise paragraph 7.9 (g) to read "Feedback from Member States shows that the triennial review of operational activities for development and related activities are relevant".

Paragraph 7.10

Replace the words "the Security Council resolution on women, peace and security" with the words "the relevant resolutions of the principal organs of the United Nations, including the Security Council, the General Assembly and the Economic and Social Council".

Paragraph 7.13 (b)

Replace paragraph 7.13 (b) with the following: "Enhanced capacity to provide effective gender advisory services that assist developing countries and countries with economies in transition, at their request, in implementing the Beijing Declaration and the Platform for Action of the Fourth World Conference on Women, to Member States, and enhanced involvement of all

other actors to effectively implement the recommendations contained in the outcome of the twenty-third special session of the General Assembly, as well as the Convention on the Elimination of All Forms of Discrimination against Women and subsequent intergovernmental mandates, and the pertinent aspects of the Millennium Declaration".

Paragraph 7.13 (f)

Replace paragraph 7.13 (f) with the following: "Enhanced capacity of Member States and enhanced involvement of all other actors to effectively implement the recommendations contained in the Beijing Declaration and the Platform for Action of the Fourth World Conference on Women and the outcome of the twenty-third special session of the General Assembly".

Paragraph 7.14 (a)

Retain the original wording of paragraph 7.14 (a) of the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1.

Paragraph 7.14 (c)

Replace the words "Satisfaction expressed by States parties with regard to" with the words "Reports by Member States that", and at the end of the subparagraph, add the words "are useful".

Paragraph 7.14 (g)

- Replace the words "The satisfaction of" with the words "Reports by".
- Replace the words "and the Millennium Declaration" with the words "and the relevant programmes and platforms for action adopted by the General Assembly and international conferences, including the Millennium Declaration".

Paragraph 7.15

In the third sentence, after the words "older persons", add the words "including the Madrid Declaration and the International Plan of Action on Ageing, 2002".

Paragraph 7.16 (a)

Replace the words "proportion of the world's people" with the words "1990 proportion of the world's people".

Paragraph 7.17 (a)

After the words "the Copenhagen Declaration on Social Development", insert the words "the International Plan of Action on Ageing, 2002".

Paragraph 7.17 (b)

Replace paragraph 7.17 (b) with the following: "Improved ability of Member States, through the provision of effective assistance, to pursue the goal of eradicating poverty through decisive national action and international cooperation".

Paragraph 7.17 (e)

Revise the beginning of the new text in paragraph 7.17 (e) to read "Increased awareness of national Governments and the international community to realize through their strengthened capacity the International Plan of Action on Ageing, 2002", and retain the rest of the new text.

Paragraph 7.18 (b)

- Retain the original wording of subparagraph 7.18 (b) of the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1.
- Retain new text and renumber accordingly.

Paragraph 7.33 (a) (old)

Retain the original wording of paragraph 7.33 (a) of the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1, and replace the words "High-level International Intergovernmental Event on Financing for Development, to be held in 2001" with the words "International Conference on Financing for Development, held in 2002".

Paragraph 7.33 (a) (new)

Revise new paragraph 7.33 (a) to read "Supporting efforts to achieve good governance within each country, good governance at the international level and transparency in the financial and monetary systems, and to mobilize financial resources for development as called for in the Millennium Declaration".

Paragraph 7.33 (b)

- Retain the original wording of paragraph 7.33 (b) of the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1, and renumber accordingly.
- Revise new paragraph 7.33 (b) to read "Enhancing the efforts to implement the outcomes of the Third United Nations Conference on the Least Developed Countries and the International Conference on Financing for Development, in particular in the areas of domestic resource mobilization, official development assistance, foreign direct investment, including international private capital flows, trade, the effective use of public private partnerships, the international financial system and the financial opportunities and challenges presented by the increased role of the private sector in economic activity and the globalization of financial markets".

Paragraph 7.33 (d)

Retain the original wording of subparagraph 7.33 (d) of the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1.

Paragraph 7.33 (e)

Replace paragraph 7.33 (e) with the following: "Fostering closer collaboration and understanding among the General Assembly, the Economic and Social Council and the Bretton Woods institutions, as called for in the Millennium Declaration".

Paragraph 7.34

Retain the original wording of paragraph 7.34 of the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1.

Paragraph 7.34 (a)

At the end of the subparagraph, add the following: "inter alia, to address the special needs of the least developed countries".

Paragraph 7.34 (b)

Replace paragraph 7.34 (b) with the following: "To hold an exchange of views in order to facilitate enhanced understanding in developing countries, in particular the least developed countries and the countries with economies in transition, of the actions necessary, including greater assistance to mobilize and allocate, in an efficient and gender-sensitive manner, domestic financial resources for development".

Paragraph 7.34 (c)

After the words "financial crises", insert the words "and appropriate mechanisms to address, in a sustainable manner, the problems derived from difficulties to pay foreign debt".

Paragraph 7.35

Retain the original wording of paragraph 7.35 of the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1.

Subprogramme 9

Change the title of subprogramme 9 to read "Sustainable forest management".

Paragraph 7.42 (d)

Replace the words "reporting by Governments" with the words "voluntary reporting by Governments".

Paragraph 7.43 (c)

Replace the words "The number of" with the words "The effectiveness of".

Paragraph 7.43 (d)

Replace the word "mechanism" with the word "approach".

Paragraph 7.43 (e) (new)

Add a new subparagraph 7.43 (e) to read "The implementation of the multi-year programme of work as well as the plan of action of the United Nations Forum on Forests".

Legislative mandates

Overall programme

Add General Assembly resolution 55/279 (Programme of Action for the Least Developed Countries for the Decade 2001-2010).

Subprogramme 3

Add General Assembly resolution 52/194 (Role of microcredit in the eradication of poverty).

Subprogramme 7

Add reference to General Assembly resolution 56/207 (Implementation of the first United Nations Decade for the Eradication of Poverty (1997-2006), including the proposal to establish a world solidarity fund for poverty eradication).

Subprogramme 9

Add Economic and Social Council resolution 2000/35 (Report on the fourth session of the Intergovernmental Forum on Forests).

Add Economic and Social Council decision 2001/293 (Report of the United Nations Forum on Forests on its first session and provisional agenda for its second session).

Programme 8
Africa: New Agenda for Development

110. At its 10th meeting, on 18 June 2002, the Committee considered the proposed revisions to programme 8, Africa: New Agenda for Development, of the medium-term plan for the period 2002-2005 (A/57/6 (Prog. 8)).

111. The representative of the Secretary-General introduced the proposed revisions and responded to queries raised during the Committee's consideration of them.

Discussion

112. Strong support was expressed for the high priority that the United Nations continued to give to the development of Africa, especially in the light of the many challenges faced by the region.

113. It was emphasized, however, that in order to address the challenges effectively the activities relating to Africa contained in various programmes should be implemented so as to produce a coherent and coordinated United Nations response

to the development of Africa. That was important for enhancing the impact and sustainability of the work of the United Nations in Africa.

114. It was stated that the specific General Assembly resolution on the zone of peace and cooperation of the South Atlantic (resolution 56/7) could have been added to the legislative mandates because the zone could be regarded as a useful tool to promote development and cooperation among the countries of the southern hemisphere.

115. Attention was drawn to the fact that the final review and appraisal of the United Nations New Agenda for the Development of Africa in the 1990s (UN-NADAF) would be conducted during the fifty-seventh session of the General Assembly. It was noted that programme 8 had been created in response to the adoption of UN-NADAF, and as such, its orientation, structure and content would need to be adapted to reflect the outcome of the final review and appraisal.

116. In the light of the above, questions were raised concerning the desirability of revising the programme at this stage since it would need to be revised after the final review and appraisal of UN-NADAF.

Conclusions and recommendations

117. **The Committee noted the proposed revisions to programme 8 and recommended that, after the final review and appraisal of the United Nations New Agenda for the Development of Africa in the 1990s that was expected to be carried out during the fifty-seventh session of the General Assembly, the Secretary-General submit a revised programme to reflect the outcomes of the review.**

Legislative mandates

118. **Under "General Assembly resolutions", the Committee recommended the following addition:**

> **"56/177 Implementation of the outcome of the World Summit for Social Development and of the twenty-fourth special session of the General Assembly."**

Programme 9
Trade and development

119. At its 11th meeting, on 18 June 2002, the Committee considered the proposed revisions to programme 9, Trade and development, of the medium-term plan for the period 2002-2005 (A/57/6 (Prog. 9)).

120. The representative of the Secretary-General introduced the proposed revisions and responded to questions raised during the Committee's consideration of them.

Discussion

121. Support for the programme of work and appreciation for the activities of the United Nations Conference on Trade and Development (UNCTAD) in support of the least developed countries were expressed. The view was expressed that the proposed revisions were fully in accordance with the Bangkok Declaration and the provisions

of General Assembly resolution 56/227. However, questions were raised regarding the wording of the last sentence of the overall orientation (para. 9.1), and it was mentioned that other internationally agreed goals should have been included other than those of the United Nations Millennium Declaration. Concern was also expressed that the proposed revisions did not define more explicitly the responsibilities of UNCTAD as a result of the Programme of Action for the Least Developed Countries for the Decade 2001-2010, adopted by the Third United Nations Conference on the Least Developed Countries, as well as the coordination with the Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States.

122. Support was expressed to the work of UNCTAD, in particular in relation to the provision of technical assistance to developing countries, in order to support their integration into the world economy and to help them in addressing the problems associated with the globalization process.

123. The view was expressed that the reference to official development assistance in paragraph 9.1 should be deleted because UNCTAD had no mandate in that field.

124. Questions were raised regarding the rationale for the proposal to delete the phrase "contribution to the graduation of least developed countries" in paragraph 9.28 since the graduation from the category of least developed countries should be the ultimate objective to be achieved. It was suggested that that proposal be reviewed.

125. It was also suggested that the strategy section be reviewed in order to be more general and to refer to the implementation of the Brussels Programme of Action in its entirety. The view was expressed that the references to "relevant outcomes" of the Third United Nations Conference on the Least Developed Countries (paras. 9.28 and 9.29) and to "relevant parts of the outcomes" (para. 9.30) were not appropriate since the programme should be implemented as a whole and not partially.

126. The view was expressed that the document could be improved by mentioning a closer coordination and cooperation with other bodies working with international trade, including the World Trade Organization, and referring to the outcomes of the Doha and Monterrey conferences.

127. The Secretariat was asked about the changes that had arisen since the Third United Nations Conference on the Least Developed Countries and their implications for the functions of UNCTAD and the coordination of work with the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States.

Conclusions and recommendations

128. The Committee recommended that the General Assembly approve the revisions proposed by the Secretary-General to programme 9, Trade and development, of the medium-term plan for the period 2002-2005, with the following modifications:

Paragraph 9.1

- **In the third sentence, delete the words "the relevant aspects of" before the words "the Programme of Action for the Least Developed Countries";**

- At the end of the third sentence, add the words "and the outcome of the Fourth Ministerial Conference of the World Trade Organization (Doha, 2001) and the Monterrey Consensus of the International Conference on Financing for Development (Monterrey, 2002), as endorsed by the General Assembly";
- Replace the last sentence with the following sentence: "Through the implementation of the Bangkok Plan of Action, the United Nations Millennium Declaration (General Assembly resolution 55/2) and the follow-up to the outcome of the Millennium Summit (General Assembly resolution 56/95), the Brussels Programme of Action and the Monterrey Consensus of the International Conference on Financing for Development, as endorsed by the General Assembly, UNCTAD would contribute to the attainment of internationally agreed goals, particularly in relation to trade, investment, debt and resource mobilization, including official development assistance, foreign direct investment and other private financial flows.";
- Add the following sentence after the last sentence: "The programme would enhance its operational capacities in the activities of UNCTAD aimed at supporting recipient countries, especially developing countries, and in particular the least developed countries, the landlocked developing countries and the small island developing States".

Paragraph 9.3

Add a final sentence reading: "Supporting developing countries through the pursuit of the objectives of UNCTAD in the current and forthcoming negotiations in the World Trade Organization is a particular priority during the period of this medium-term plan".

Paragraph 9.4

Delete the third sentence ("The strategy to be followed takes into account the emphasis by Member States at the tenth session of UNCTAD on the role of the United Nations Conference on Trade and Development as the focal point for the United Nations system for least developed country issues.").

Paragraph 9.6

In the second sentence, replace the words "the focal role of UNCTAD with regard to work concerning" with the words "UNCTAD's work on".

Paragraph 9.15

Delete the indicators and substitute the text used for indicators in other subprogrammes:

> "Indicators of achievement would include: (a) the timeliness, usefulness, degree of implementation and quality of the subprogramme's research and analysis programme, as measured by readership and other surveys; (b) the views of Member States on the practical value and impact on the development prospects of developing countries of policy recommendations, as expressed in the conclusions of the regular review of the work

programmes undertaken by intergovernmental bodies; and (c) the degree of implementation, effectiveness and impact of technical cooperation activities, as assessed by indicators contained in the relevant project documents."

Paragraph 9.21

In the second sentence, after the words "WTO itself", add the words "in particular the Doha work programme".

Paragraph 9.28

- **Delete the word "relevant" before the words "outcomes of the Third United Nations Conference on the Least Developed Countries";**
- **The phrase at the end of the paragraph should be expanded to read as follows: "and to contribute to the eventual graduation of the least developed countries by meeting objective criteria as agreed intergovernmentally".**

Paragraph 9.29

- **In subparagraph (i), insert the words "and competence" after the word "expertise";**
- **In subparagraph (iv), delete the words "the relevant" before the words "aspects of the Barbados Programme of Action".**

Paragraph 9.30

In the first sentence, delete the words "the relevant parts of the".

Legislative mandates

Add the following entry:

"56/198 — Further implementation of the outcome of the Global Conference on the Sustainable Development of Small Island Developing States"

Programme 10
Environment

129. At its 12th meeting, on 19 June 2002, the Committee considered the proposed revisions to programme 10, "Environment", of the medium-term plan for the period 2002-2005 (A/57/6 (Prog. 10)).

130. The representative of the Secretary-General introduced the proposed revisions and responded to queries raised during the Committee's consideration of these revisions.

Discussion

131. Appreciation was expressed for the proposed revisions to programme 10, in particular for the inclusion of references to the Millennium Declaration, the

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants. It was emphasized that the strategy of the programme should cover all the elements relating to the United Nations Environment Programme contained in General Assembly resolution 55/2, "United Nations Millennium Declaration", and resolution 56/95, "Follow-up to the outcome of the Millennium Summit".

132. Concern was expressed about the proposed deletion of the reference to water in paragraph 10.21 (b) of the proposed revisions and it was pointed out that explicit reference should continue to be made to it, considering the importance of this natural element.

133. It was stated that the revisions to the medium-term plan should be consistent primarily with the actual medium-term plan rather than with the results-based budgeting narrative approved in the programme budget for the 2002-2003 biennium. It was also recalled that General Assembly resolution 55/231 stipulated that expected accomplishments and indicators of achievement should be used to measure achievements of the Organization and not those of individual Member States.

134. The view was expressed that further revisions would be necessary following the World Summit on Sustainable Development, to be held in Johannesburg, South Africa, in August 2002.

135. It was stated that the perverse incentives over the environment, such as agricultural subsidies, must be avoided. The view was also expressed that environmental criteria should not be used as trade barriers.

136. The Global Reporting Initiative was commended as a voluntary initiative on natural resources.

137. It was suggested that the following words be inserted at the end of the last sentence in paragraph 10.3: "as well as the outcome of the Third United Nations Conference on the Least Developed Countries".

Conclusions and recommendations

138. **The Committee recommended that the General Assembly approve the revisions proposed by the Secretary-General to programme 10, Environment, of the medium-term plan for the period 2002-2005, with the following modifications:**

Paragraph 10.3

In the last sentence, replace the word "UNEP" with the words "the mandates of UNEP".

Paragraph 10.3 (c)

At the end of paragraph 10.3 (c), insert the words "paying full attention to the gender dimension".

Paragraph 10.20 (a)

Replace the words "particularly energy and water" with the words "including energy, water and biodiversity".

Paragraph 10.20 (c)

- Add the words "the Basel Convention on Transboundary Movement of Hazardous Wastes" after the words "Stockholm Convention on Persistent Organic Pollutants".
- Delete the words "and so on".

Paragraph 10.20 (d)

Replace the words "the effective and integrated implementation" with the words "the effective and coordinated implementation".

Paragraph 10.20 (i)

Replace paragraph 10.20 (i) with the following: "promoting cooperation between UNEP, UNCTAD and WTO within their mandates".

Paragraph 10.21 (a)

Replace paragraph 10.21 (a) with the following: "the enhanced capacity of countries, particularly developing countries, with the assistance of UNEP, to assess, to have access to and to adopt affordable environmentally sound technologies".

Paragraph 10.21 (b)

- Retain the original wording of paragraph 10.21 (b) of the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1.
- Delete the new text for paragraph 10.21 (b).

Paragraph 10.21 (c)

- Retain the original wording of paragraph 10.21 (c) of the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1, as follows: "reduced pollution and risks for human beings and their environments", and renumber as new paragraph 10.21 (g).
- Delete the words "and their environmental and social performance, including the gender dimension".

Paragraph 10.21 (d)

- Retain the original wording of paragraph 10.21 (d) of the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1, as follows: "identification of means of minimizing the adverse environmental impacts of economic policy, especially trade liberalization and investment policies".
- Delete the new text of paragraph 10.21 (d).

Paragraph 10.21 (e)

Replace paragraph 10.21 (e) with the following: "continuing efforts and concrete initiatives to encourage decision makers at the national, regional and local levels to address the economic, environmental and social aspects of sustainable development".

Paragraph 10.21 (h)

Insert a new paragraph 10.21 (h), to read "trade and investment policies supportive of sustainable development".

Paragraph 10.22 (b)

Revise paragraph 10.22 (b) to read "the number of countries in which renewable energy, advanced fossil fuel technologies and energy efficiency, as appropriate, are introduced and used as elements of national energy policies and strategies".

Paragraph 10.22 (c)

Replace paragraph 10.22 (c) with the following: "the number of companies voluntarily using relevant guidelines, including the use of the Global Reporting Initiative Guidelines to report on their use of natural resources".

Paragraph 10.22 (d)

- Retain the original wording of paragraph 10.22 (d) of the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1, as follows: "the number of countries and industries commencing or strengthening programmes on awareness of and preparedness for emergencies at the local level or the equivalent and the number of companies adopting environmental management systems".
- Delete new text of paragraph 10.22 (d).

Paragraph 10.22 (e)

- Retain the original wording of paragraph 10.22 (e) of the medium-term plan for the period 2002-2005, as contained in document A/55/6/Rev.1, as follows: "the number of environmentally responsible investment patterns employed by the private sector and the development and use of environmental procedures and practices".
- Delete the new text in paragraph 10.22 (e).

Paragraph 10.22 (f)

Replace paragraph 10.22 (f) with the following: "the number of countries, particularly developing countries, with the enhanced capacity to assess, to have access to and to adopt affordable environmentally sound technologies as a result of UNEP assistance".

Paragraph 10.22 (g)

Revise paragraph 10.22 (g) to read "the number of signatures/ratifications relevant to multilateral environmental agreements".

Programme 11
Human settlements

139. At its 13th meeting, on 19 June 2002, the Committee considered the proposed revisions to programme 11, "Human settlements", of the medium-term plan for the period 2002-2005 (A/57/6 (Prog. 11)).

140. The representative of the Secretary-General introduced the proposed revisions to programme 11 and responded to queries raised during the Committee's consideration of these revisions.

Discussion

141. Good support was expressed for the proposed revisions to the programme.

142. Explanations were sought as to how the activities carried out by the United Nations Human Settlements Programme (UN-Habitat) to implement the two global campaigns referred to in paragraph 11.6 of the proposed revisions (the Global Campaign for Secure Tenure and the Global Campaign on Urban Governance) related to the activities carried out by Governments. It was suggested that this relationship be spelled out in the narrative of the programme. It was further stated that the strategy in paragraph 11.6 (b) could be revised to include indicators for capacity-building. The view was also expressed that the indicators of achievement in paragraph 11.8 (a) could be formulated more specifically to include elements such as the social, legal and cultural orientation of Member States.

143. The view was also expressed that the wording of the objective in paragraph 11.15 should be reformulated so as to clarify that the main responsibility for implementing the principles and honouring the commitments of the Habitat Agenda rested with national Governments. It was suggested that the relationship between UN-Habitat and the Joint United Nations Programme on HIV/AIDS should be elaborated further.

144. The view was expressed that international resources were an important source for financing shelter and human settlements and should therefore be mentioned in paragraph 11.20. It was felt that more precise indicators of achievement would need to be developed in order to assess the impact and efficiency of the United Nations Habitat and Human Settlements Foundation in providing financial resources for developing shelter and sustainable human settlements.

145. Queries were raised regarding the division of tasks between subprogrammes 1 and 3.

Conclusions and recommendations

146. **The Committee recommended that the General Assembly approve the revisions proposed by the Secretary-General to programme 11, Human settlements, of the medium-term plan for the period 2002-2005, with the following modifications:**

Paragraph 11.1

In the third sentence, retain the words "the United Nations Conference on Human Settlements (Habitat II), in particular the Habitat Agenda".

Paragraph 11.2

At the end of the paragraph, add the following: "Through technical cooperation, UN-Habitat will support developing countries in achieving the goals of adequate shelter for all and the development of sustainable human settlements".

Paragraph 11.3

In the second sentence, replace the words "in coordination with the programmes of, among others," with the words "in coordination with the following programmes and agencies within their respective mandates:".

Paragraph 11.4

At the beginning of the last sentence, insert the words "Adequate resources as well as".

Paragraph 11.6

- In the third sentence, after the words "organizational capacity-building", insert the words "resource mobilization".
- In the fourth sentence, replace the words "norms of secure tenure" with the words "norms of secure and legal tenure".

Paragraph 11.7

Revise paragraph 11.7 to read:

"The number of countries assisted by UN-Habitat, upon request:

(a) To improve tenurial rights;

(b) To enhance higher quality housing for the poor, more reliable urban infrastructure and services, especially clean water, sanitation, waste management and public transport, as well as improved city environments and safer cities;

(c) To improve governance, including decentralization, social integration, inclusiveness, community participation, partnership, transparency, accountability, efficiency and effective local leadership, within the overall context of the Habitat Agenda goal of sustainable human settlements development in an urbanizing world. *[part of the text is derived from old paras. 11.7 and 11.12; the remainder is new and reflects new mandates and restructuring]*"

Paragraph 11.8

Revise paragraph 11.8 to read:

"Indicators of achievement will include the number of activities carried out by the secretariat of UN-Habitat to assist countries in:

(a) Adopting national legislation for the granting and protection of tenure, recognizing women's tenurial rights, inheritance rights, introducing policies and procedures for more open and affordable land markets, and introducing measures and policies to reduce forced evictions;

(b) Assessing progress made towards meeting the Millennium Declaration target of significantly improving the quality of life of at least 100 million slum-dwellers by the year 2020 through UN-Habitat-supported initiatives;

(c) Adopting national legislation to facilitate sustainable urban development and participatory, transparent and accountable urban governance. *[part of subparagraph (a) is derived from old subparagraph 11.8 (a); the remainder is new and reflects new mandates and restructuring]"*

Paragraph 11.9

At the end of the last sentence, replace the words "at the national and local levels" with the words "at the international, national and local levels".

Paragraph 11.11 (c)

Replace the words "poverty reduction" with the words "poverty eradication".

Paragraph 11.12 (b)

- **Replace the words "Adoption by Governments and local authorities" with the words "Adoption at the international, national and local levels".**
- **Replace the words "poverty reduction" with the words "poverty eradication".**

Paragraph 11.13 (b)

Replace the words "The number of Governments" with the words "The number of international institutions and national".

Paragraph 11.13 (c)

After the words "UN-Habitat and its partners", insert the words "and the percentage of these projects and programmes".

Paragraph 11.14

In the last sentence, after the words "important feedback", insert the words "on lessons learned and best practices".

Paragraph 11.15

- Replace the words "at the national and local levels" with the words "primarily at the national level and also at the local level".
- At the end of the paragraph, add the words "and within the legal framework of each country".

Paragraph 11.17

Revise the paragraph to read:

"The number of States assisted, upon request, by UN-Habitat, to:

(a) Establish and maintain effective relationships with Governments and other Habitat Agenda partners;

(b) Provide advisory services and implement technical cooperation projects and programmes in the area of human settlements;

(c) Coordinate advocacy activities within the respective regions, particularly in the context of the global campaigns;

(d) Promote the development of partnerships for project implementation."

Paragraph 11.20

Throughout the paragraph, insert the words "and international" after the word "domestic".

Paragraph 11.23 (c)

Insert the words "private sector donors" before the words "and bilateral donors".

Paragraph 11.24 (b)

After the words "from domestic sources", replace the words "in developing countries and countries with economies in transition" with the words "through strengthening the capacity of domestic sources of developing countries and countries with economies in transition".

Paragraph 11.25 (b)

Before the words "The level of", insert the words "The increase of".

Paragraph 11.25 (c)

Before the words "The level of", insert the words "The increase of".

Programme 12
Crime prevention and criminal justice

147. At its 12th meeting, on 19 June 2002, the Committee considered the proposed revisions to programme 12, Crime prevention and criminal justice, of the medium-term plan for the period 2002-2005 (A/57/6 (Prog. 12)).

148. The representative of the Secretary-General introduced the proposed revisions and responded to questions raised during the Committee's consideration of the revisions.

Discussion

149. General support for the programme was expressed. The balance between crime prevention and criminal justice was commended. As regarded terrorism, it was felt that the role of the Centre for International Crime Prevention was to provide technical assistance.

150. A view was expressed that paragraph 12.3 (f) should be brought in line with paragraph 24 (b) of General Assembly resolution 56/261 entitled "Plans of action for the implementation of the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century".

151. It was pointed out that paragraph 12.8 (c) was vague and that paragraph 12.8 (f) should have elaborated on the usefulness of the databases.

Conclusions and recommendations

152. **The Committee recommended that the General Assembly approve the revisions proposed by the Secretary-General to the medium-term plan for the period 2002-2005 of programme 12, Crime prevention and criminal justice, with the following modifications:**

Paragraph 12.1

Replace the words "the United Nations Millennium Declaration and the road map towards its implementation" with the words "the recommendations on crime prevention of the United Nations Millennium Declaration".

Paragraph 12.3 (f)

Replace the words "and by raising public awareness" with the words "and, in cooperation with Member States, by raising awareness".

Paragraph 12.3 (j)

Replace paragraph 12.3 (j) with the following: "Monitoring efforts by Member States to combat the criminal misuse of information technology".

Paragraph 12.3 (m)

At the end of paragraph 12.3 (m), add the words "and urging increased donor contributions to the general fund".

Paragraph 12.3 (n)

Replace paragraph 12.3 (n) with paragraph 9 of General Assembly resolution 56/123, as follows: "Encouraging relevant Secretariat entities, programmes, funds and organizations of the United Nations system, in particular the United Nations Development Programme, international financial institutions, in particular the World Bank, and regional and national funding agencies, to support the technical operational activities of the Centre".

Paragraph 12.7 (b)

Replace the words "The successful negotiation and adoption of" with the words "The successful negotiation, adoption and implementation of".

Paragraph 12.7 (e)

After the words "An enhanced level of concerted action", insert the words "measured by a more effective cooperation".

Paragraph 12.8 (c)

Replace paragraph 12.8 (c) with the following: "The degree of appreciation expressed by the Ad Hoc Committee for the Negotiation of a Convention against Corruption for the services provided for the negotiation of a convention against corruption".

Programme 13
International drug control

153. At its 12th meeting, on 19 June 2002, the Committee considered the proposed revisions to programme 13, International drug control, of the medium-term plan for the period 2002-2005 (A/57/6 (Prog. 13)).

154. The representative of the Secretary-General introduced the proposed revisions and responded to questions raised during the Committee's consideration of these revisions.

Discussion

155. General support for the programme and for the proposed revisions thereto, including those that showed the participation of the Office for Drug Control and Crime Prevention in the Joint United Nations Programme on Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS) (UNAIDS), was expressed. The view was expressed that such participation should not result in a reduction of other important core activities of the programme.

156. It was observed that proposed amendments to the medium-term plan included the approved narrative of the programme budget for 2002-2003. In this connection, the view was expressed that short-term goals/objectives in the programme budget were different from those in the medium-term plan.

157. A view was expressed that expected accomplishments and indicators of achievement should measure the work of the Organization and not that of individual Member States.

Conclusions and recommendations

158. The Committee recommended that the General Assembly approve the revisions proposed by the Secretary-General to programme 13, International drug control, of the medium-term plan for the period 2002-2005, with the following modifications:

Paragraph 13.3

At the end of the paragraph, add the words "and the relevant resolutions of the General Assembly on the item".

Paragraph 13.7

In the first sentence, insert the word "primarily" after the word "vested".

Paragraph 13.9 (c)

Retain the original wording contained in paragraph 13.9 (c) of the medium-term plan for the period 2002-2005 (A/55/6/Rev.1) and delete the proposed new paragraph 13.9 (d).

Paragraph 13.9 (g)

Retain the words "Timely dissemination" and the words "as well as on control measures".

Paragraph 13.10 (b)

Retain the original wording contained in paragraph 13.10 (b) of the medium-term plan for the period 2002-2005 (A/55/6/Rev.1).

Paragraph 13.10 (c)

After the phrase "civil society activities", insert the phrase "in particular through contributions to governmental decision-making processes and policies".

Paragraph 13.10 (d)

After the words "Measures taken to", insert the words "assist Governments to".

Paragraph 13.15 (c)

Replace the word "accepting" with the word "using".

Paragraph 13.15 (e)

Delete the subparagraph.

Paragraph 13.15 (f)

Replace the new text with the phrase "The increased availability of the repository of legal information to facilitate its use by Governments and relevant entities".

Paragraph 13.15 (g)

Replace the existing text with the following: "An increased number of Governments assisted, upon request, by UNDCP, in maritime drug law enforcement and cooperation and the resulting number and impact of successful operations".

Paragraph 13.15 (h)

At the beginning of the paragraph, insert the words "Improved coordination in detecting".

Paragraph 13.15 (i)

Replace the words "The number of Governments following the recommendation of the Commission" with the words "The quality of assistance provided to Member States".

Paragraph 13.15 (j)

After the phrase "at their request", insert the phrase "based on commitments between the Governments and the United Nations International Drug Control Programme,".

Paragraph 13.15 (n)

Delete the subparagraph.

Paragraph 13.19 (g)

Replace the new text with the following: "Improvement in the various guides produced focusing on prevention and treatment issues used by Member States".

Paragraph 13.20 (d)

Replace the words "The number of Member States with more" with the words "The number of Member States assisted, upon request, by UNDCP, in incorporating", and delete the works "in place".

Paragraph 13.20 (e)

Replace the existing text of the subparagraph with the following: "The number of Member States assisted, upon request, by UNDCP in using standardized and harmonized methodologies for drug abuse data collection on at least one of the key indicators".

Paragraph 13.20 (h)

Delete the phrase "and actually in use by Member States" and insert at the end of the paragraph the words "and the acceptance into use by Member States of such guides".

Paragraph 13.26 (f)

Replace the existing text with the following: "Publication of annual estimates on illicit cultivation and production of narcotic drugs in the countries assisted by UNDCP".

Paragraph 13.26 (g)

Replace the new text with the following: "The number of Member States assisted by UNDCP, upon request, in incorporating best practices on law enforcement and alternative development plans".

Paragraph 13.26 (m)

Insert the words "with the assistance of UNDCP" after the word "trained".

159. **The Committee concluded that the proposed revisions for programme 13 contained too many expected accomplishments and indicators of achievement and that results-based budgeting could best be operative if the number of expected accomplishments and of indicators of achievement were limited.**

Programme 14
Economic and social development in Africa

160. At its 14th meeting, on 20 June 2002, the Committee considered the proposed revisions to programme 14, Economic and social development in Africa, of the medium-term plan for the period 2002-2005 (A/57/6 (Prog. 14)).

161. The representative of the Secretary-General introduced the proposed revisions and responded to questions raised during the Committee's consideration of them.

Discussion

162. Support was expressed for the programme. The inclusion of new mandates related to the New Partnership for Africa's Development (NEPAD), HIV/AIDS and the least developed countries was welcomed. The view was expressed that references to the United Nations Millennium Declaration should be included in the text of the overall orientation of the programme. It was pointed out that the proposed revisions should have included references to the outcome of the World Summit on Sustainable Development, to be held in Johannesburg, South Africa. The view was expressed that reference to the South-South summit held in Havana in the spring of 2000 should be incorporated in the text under overall orientation. The inclusion of the reference to the Constitutive Act of the African Union under subprogramme 6 was welcomed.

163. The establishment of the new subprogramme 9, dealing with training and infrastructure development, was supported. The view was also expressed that since the training activities to be carried out under new subprogramme 9 were cross-cutting they could have been addressed under already existing subprogrammes.

164. The view was expressed that a number of indicators of achievement should be reformulated in order to provide a qualitative analysis of the impact of the work and of the progress achieved.

165. Clarification was sought of the definition of the concepts "economic management" and "corporate governance". It was explained that they referred to the daily management of economics, including macroeconomic stability, effective management, regulatory and appropriate frameworks, the achievement of greater transparency and the fight against corruption.

166. Queries were raised about the change of the name of subprogramme 3. It was explained that food security was still an issue to be dealt with by the Economic Commission for Africa (ECA).

Conclusions and recommendations

167. **The Committee recommended to the General Assembly that it examine this programme in the light of the final assessment of the United Nations New Agenda for the Development of Africa in the 1990s (UN-NADAF) and any decisions which might be taken on NEPAD.**

168. **The Committee recommended that the General Assembly approve the revisions proposed by the Secretary-General to programme 14, Economic and social development in Africa, of the medium-term plan for the period 2002-2005, with the following modifications:**

Indicators of achievement

Throughout the whole text, after the word "number" insert the words "and impact".

Paragraph 14.2

At the end of the paragraph, add the words "the United Nations Millennium Declaration and the Declaration and the Havana Programme of Action adopted by the South Summit of the Group of 77, held in Havana from 10 to 14 April 2000".

Paragraph 14.13 (a)

In the third sentence, after the words "the Lomé IV Convention", insert the words "and other trade-related bilateral and multilateral initiatives".

Paragraph 14.13 (c)

Retain the original wording of paragraph 14.13 (c) of the medium-term plan, as contained in document A/55/6/Rev.1.

Subprogramme 3

Retain the original name of subprogramme 3 given in the medium-term plan, as contained in document A/55/6/Rev.1.

Paragraph 14.21 (b)

At the end of the second sentence, after the words "economic and corporate governance", insert the words "in the context of implementation of the New Partnership for Africa's Development".

Paragraph 14.21 (c)

Delete the first sentence (*moved from old paragraph 14.13 (c)*).

Paragraph 14.30

Retain the original wording of paragraph 14.30 of the medium-term plan, as contained in document A/55/6/Rev.1.

Paragraph 14.31 (b)

Retain the original wording of paragraph 14.31 (b) of the medium-term plan, as contained in document A/55/6/Rev.1.

Paragraph 14.31 (c)

Retain the original wording of paragraph 14.31 (c) of the medium-term plan, as contained in document A/55/6/Rev.1.

Paragraph 14.37

In the third sentence, replace the words "in the framework of the implementation of" with the words "in support of the objectives of".

Paragraph 14.43

Replace the words "the number of" with the words "efficiency in the training provided to".

Legislative mandates

- **Add General Assembly resolutions 56/202 (Economic and technical cooperation among developing countries), 55/182 and 56/178 (International trade and development) to the general part.**
- **Add General Assembly resolution 55/182 (International trade and development) to subprogramme 2.**

Programme 15
Economic and social development in Asia and the Pacific

169. At its 14th meeting, on 20 June 2002, the Committee considered the proposed revisions to programme 15, Economic and social development in Asia and the Pacific, of the medium-term plan for the period of 2002-2005 (A/57/6 (Prog. 15)).

170. The representative of the Secretary-General introduced the proposed revisions and responded to queries raised during the Committee's consideration of them.

Discussion

171. Support was expressed for the proposed revisions and for the important role of the Economic and Social Commission for Asia and the Pacific (ESCAP) in the region. It was noted with appreciation that the reformulated programme was more focused and result-oriented and that higher priority was given to poverty reduction and to combating the spread of HIV/AIDS.

172. The view was expressed that the reorganization of ESCAP was a welcome and necessary exercise, and appreciation was expressed for the series of intergovernmental consultations and extensive informal consultations with Member States that had been undertaken in the course of that exercise.

173. Although it was recognized that, in general, the revised indicators had been improved compared with the original ones, the view was also expressed that further efforts should be made to identify more appropriate indicators which should clearly connect to expected accomplishments and the outcome of the work of ESCAP.

174. The view was expressed that references to the least developed countries should have been included in each subprogramme and not only in subprogrammes 1 and 4.

175. It was suggested that reference to South-South cooperation and to the outcome of the Havana Summit be carefully articulated under the strategy, expected accomplishments and indicators of achievement.

176. The view was expressed that ESCAP should continue to reform its programmes and practices to make them more demand-driven and interactive.

Conclusions and recommendations

177. **The Committee recommended that the General Assembly approve the revisions proposed by the Secretary-General to programme 15, Economic and social development in Asia and the Pacific, of the medium-term plan for the period 2002-2005, with the following modifications:**

Throughout the text

- **Replace the words "poverty reduction" with the words "poverty eradication" throughout the text of the programme.**
- **Replace the phrase "Emerging social issues" with "Social development, including emerging social issues", including in the title of subprogramme 7.**
- **Replace the term "vulnerable" or "vulnerable groups" with "marginalized" or "marginalized groups".**

Paragraph 15.1

In the second sentence, after the words "that allow them", insert the words "while minimizing the adverse impacts of globalization".

Paragraph 15.3

- **At the end of the fourth sentence, after the words "economic, social and environmental areas", add the words "as well as on matters relating to human resource development".**
- **In the penultimate sentence, delete the words "to 'human security'".**

Paragraph 15.5

The first sentence should read: "In line with global priorities, and taking into account the diversity in levels of development of countries and areas of the

Asia and Pacific region, the programme will focus especially on the concerns of the developing countries and countries with economies in transition in the region, particularly the special needs of the least developed countries, landlocked developing countries and small island developing States, to accelerate their integration into the regional and global economies."

Paragraph 15.8 (a)

After the words "poverty, population and the environment", insert the words "and economic growth".

Paragraph 15.8 (c)

Replace the words "poverty alleviation" with the words "poverty eradication".

Paragraph 15.9

- **In the first sentence, replace the words "economic and social position of the poor" with the words "economic and social condition of the poor".**
- **The second sentence should be changed to read: "ESCAP will give special attention to reducing poverty, especially in the developing countries and countries with economies in transition of the region, taking into account particularly the special needs of the least developed countries, landlocked developing countries and small island developing States".**
- **At the end of the last sentence, add the words "and the relevant provisions of the Declaration and the Havana Programme of Action adopted by the South Summit of the Group of 77, held in Havana from 10 to 14 April 2000".**

Paragraph 15.10 (a)

Replace the words "recognition of ESCAP as a think tank with a thorough understanding of" with the words "enhanced analytical, policy and operational capabilities of ESCAP as regards".

Paragraph 15.10 (b)

After the words "pro-poor", insert the words "economic growth".

Paragraph 15.10 (c)

Insert the word "facilitating" before the words "enhanced regional cooperation".

Paragraph 15.11 (a)

Replace the words "the views of members and associate members" with the words "satisfaction of Member States".

Paragraph 15.11 (b)

Insert the words "inter alia" between the words "associate members" and the words "in response to".

Paragraph 15.11 (c)

Replace paragraph 15.11 (c) with the following: "the number of pilot projects implemented, adopted and replicated in the region, on the basis of best practices in poverty eradication".

Paragraph 15.12

- **Replace the words "to generate poverty data and measure progress towards the millennium development goals" with the words "to collate and utilize sectoral data, particularly relating to poverty, and measure progress towards development goals, including those contained in the United Nations Millennium Declaration".**
- **After the words "progress towards", insert the words "mobilizing international, regional and national resources in achieving".**

Paragraph 15.13 (b)

After the words "policy formulation", insert the words "resource mobilization".

Paragraph 15.13 (f)

After paragraph 15.13 (f), add a new subparagraph (g) as follows: "Collect and disseminate statistical data on mobilizing international, regional and national resources for poverty eradication".

Paragraph 15.15 (b)

The subparagraph should read: "increased capacity, especially in the developing countries and countries with economies in transition of the region, taking into account particularly the special needs of the least developed countries, landlocked developing countries and small island developing States to identify, collect, process, analyse, utilize and disseminate data needed for national economic and social development, including the capacity to support the analysis of gender issues".

Paragraph 15.15 (c)

After the word "collaboration", insert the words "in resource mobilization at the international, regional and national levels".

Paragraph 15.16 (c)

Before the words "gender issues", insert the words "resource mobilization and".

Paragraph 15.19

Subparagraph (d) should read: "enhanced capacity, especially of the developing countries and countries with economies in transition of the region, particularly the least developed countries, landlocked developing countries and small island developing States, in removing impediments related to investment attraction, facilitation and implementation measures". The reference to "central and local officials" has been deleted.

Subparagraph (e) should read: "enhanced capacity of national institutions assisting small and medium-sized enterprises of developing country members and associate members, and countries with economies in transition, especially the developing countries of the region, particularly the least developed countries, landlocked developing countries and small island developing States, to increase their export competitiveness".

Paragraph 15.20

Reword subparagraph 15.20 (b) to read: "an increase in the number of advisory services to members of the region for accession to the World Trade Organization".

Reword subparagraph 15.20 (c) to read: "an increase in the number of advisory services to members of the region for new signatories to the Bangkok Agreement".

Delete subparagraph 15.20 (d).

Reword subparagraph 15.20 (e) (now subparagraph 15.20 (d)) to read: "an increase in the number of advisory services, especially to the developing countries and countries with economies in transition of the region, particularly the least developed countries, landlocked developing countries and small island developing States, in introducing new or modified legislation, regulations and/or policies with regard to investment attraction, facilitation and implementation measures".

Paragraph 15.26

After the words "strategies that would enable them", insert the words "while minimizing the adverse impacts of globalization".

Paragraph 15.29 (d)

After the words "renewable energy development", add the words "and advanced fossil fuel technologies, where appropriate, and".

Paragraph 15.30 (d)

Replace paragraph 15.30 (d) with the following: "an increase, as appropriate, in the number of national renewable energy plans and advanced fossil fuel technologies plans introduced or improved, energy efficiency policies and measures introduced in energy-intensive establishment, and evidence of enhanced subregional energy cooperation".

Paragraph 15.31

The paragraph should read: "The objective of this subprogramme is to strengthen the capacity of ESCAP members and associate members, especially the developing countries and countries with economies in transition of the region, particularly the least developed countries, landlocked developing countries and small island developing States, to create an enabling environment for the development, transfer and application of information, communication and space technology".

Paragraph 15.33

At the end of the paragraph after the words "inter-subregional networking", add the words "inter alia, through South-South cooperation".

Subprogramme 7

Revise the title of subprogramme 7 to read "Social development including emerging social issues".

Paragraph 15.36

- **In the first sentence, after the word "manifestations", add the words "in order to enhance the productivity and quality of human resources".**
- **Replace the first bullet with the following: "Gender equality and mainstreaming and greater participation of marginalized social groups, especially the poor, women, youth, children, people with disabilities, older persons and people living with HIV/AIDS in the context of rapid socio-economic and demographic change".**

Paragraph 15.37 (c)

Replace the words "undertake policy analysis of emerging social issues" with the words "engage in social development planning".

Legislative mandates

Add the following General Assembly resolutions:

"52/194: Role of microcredit in the eradication of poverty" (subprogramme 1)

"55/182: International trade and development" (subprogramme 3)

"56/202: Economic and technical cooperation among developing countries" (subprogrammes 1 and 6)

Programme 16
Economic development in Europe

178. At its 14th meeting, on 20 June 2002, the Committee considered the proposed revisions to programme 16, Economic development in Europe, of the medium-term plan for the period of 2002-2005 (A/57/6 (Prog. 16)).

179. The representative of the Secretary-General introduced the proposed revisions and responded to questions raised during the Committee's consideration of them. He also recommended that the Committee approve an additional revision consisting of the addition of the words "and social" after the words "economic" in the second sentence of paragraph 16.2.

Discussion

180. Support was expressed for the proposed revisions, including the division of subprogramme 6 into two subprogrammes — Trade development and Industrial restructuring and enterprise development — since those subjects represented a major economic challenge for countries with economies in transition. However, some concern was expressed about the division of subprogramme 6 since it was considered that trade, industry and enterprise development were issues that should remain in the same subprogramme. Concern was also expressed that the creation of a new subprogramme 9 could have no other effect than expanding the Economic Commission for Europe (ECE) bureaucracy.

181. It was pointed out that no reference to the side effects of the ongoing process of enlargement of the European Union had been included in the proposed revisions. It was further stated that, in view of the expertise of ECE in a number of sectors, such as trade and trade facilitation and enterprise development, the revisions should include reference to the assistance that ECE could be in a position to provide to other regional commissions in those areas.

182. The view was expressed that the outcomes of international conferences did not constitute a sufficient basis for changing the mandates or overall orientation of ECE, and regional commissions should follow or implement those broad outlines in a way that was relevant to their core functions and served their members' interests and needs. Also, the ECE secretariat should seek intergovernmental agreement for its proposals at the commission level before presenting them to the Committee for consideration.

Conclusions and recommendations

183. **The Committee recommended that the General Assembly approve the revisions proposed by the Secretary-General to programme 16, Economic development in Europe, of the medium-term plan for the period 2002-2005, with the following modifications:**

Paragraph 16.13

Add the following new subparagraph (f):

> **"(f) Performance of the necessary administrative functions to maintain and update the 'Compendium of Candidate Regulations for Harmonization' and 'Registry for Global Regulations' associated with the 1998 'Agreement Concerning the Establishment of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts Which Can Be Fitted and/or Be Used on Wheeled Vehicles', to enable the Agreement to become fully operational."**

Paragraph 16.33 (d)

Add, at the end of the subparagraph, the words "in accordance with WTO regulations".

Paragraph 16.34 (a)

Insert the words "new and/or updated" between the words "the number of" and the words "ECE trade facilitation".

Paragraph 16.34 (b)

Retain the original indicator as another item.

Paragraph 16.34 (c)

Retain the original indicator as a new one.

Paragraph 16.49 (c)

Replace the words "the number of" with the words "the delivering of assistance to" and insert the words "with a view to" after the words "countries with economies in transition".

Programme 17
Economic and social development in Latin America and the Caribbean

184. At its 15th meeting, on 20 June 2002, the Committee considered the proposed revisions to programme 17, Economic and social development in Latin America and the Caribbean, of the medium-term plan for the period 2002-2005 (A/57/6 (Prog. 17)).

185. The representative of the Secretary-General introduced the proposed revisions and responded to queries raised during the Committee's consideration of the revisions.

Discussion

186. Support was expressed for the programme and the proposed revisions. The inclusion of the relevant provisions of the Millennium Declaration was noted with appreciation.

187. The view was expressed that the work of the Economic Commission for Latin America and the Caribbean (ECLAC) was of great importance to the development of the Latin American and Caribbean region. Delegations expressed praise for the work carried out by the programme in assisting Member States in assessing the economic and social effects of natural disasters and related recovery tasks as well as the efforts of ECLAC to assist the countries of the region in following up and implementing the outcomes of the recent major international conferences convened under the auspices of the United Nations in the economic, social and related fields.

188. It was observed that gender mainstreaming had been emphasized in all aspects of the work programme of ECLAC because of the cross-cutting nature of the issue. The view was expressed that emphasis should also be placed on issues of major

concern for the region, such as poverty reduction, development and the social consequences of structural adjustment policies.

189. Delegations felt that the sentence proposed for deletion in paragraph 17.3 — "Gender mainstreaming, consideration of environmental sustainability, institution-building and improvement of public regulation are priority aspects of such interrelationships" — should be retained since it encompassed a concept of importance for the whole programme.

190. Delegations mostly welcomed the proposed inclusion of the new sentence in paragraph 17.21 — "In the context of social development and equity, special emphasis will be given to consolidating the approach to development based on human rights and the promotion of peace and democracy". However, a question was raised in that regard concerning the mandate for the last part of this sentence — "approach to development based on human rights and the promotion of peace and democracy" — on the grounds that it was not based properly on any specific mandate. Concern was expressed that the insertion proposed for paragraph 17.21 did not come from any mandate of ECLAC, as had been indicated by the Secretariat. The insertion was beyond the objective of the revisions to the medium-term plan, which was aimed at updating the medium-term plan with the relevant mandates after its adoption. In this context, the Committee was unable to reach agreement regarding the retention or the deletion of the proposed new text.

191. Concern was expressed that some of the proposed revisions diluted the emphasis of the work of ECLAC in the field of the eradication of poverty and social inequity.

192. Some delegations felt that, in item (a) in paragraph 17.22, emphasis should be placed on social justice and equity, in addition to the emphasis placed on gender inequality.

193. Support was expressed for the proposed inclusion of the phrase "and for using a core set of gender indicators for public policy formulation and implementation" in paragraph 17.25 under subprogramme 5. In that regard, it was pointed out that the creation of databases, as recommended by the Ad Hoc Committee of the Whole of the twenty-third special session of the General Assembly in its report,[2] could serve to avoid unnecessary duplication and spread best practices. The view was also expressed that, in paragraph 17.28, the indicator of achievement (c) should be reformulated to shift emphasis from "consolidation of national and regional institutions dealing with gender issues" to "mainstreaming gender issues in public policy formulation and implementation in the relevant economic and social sectors".

194. It was also observed that the revisions should include a reference to the Monterrey Consensus resulting from the recent International Conference on Financing for Development.

195. Finally, questions were raised as to whether the Assembly of ECLAC at its 2002 session had given sufficient consideration to the proposed revisions.

Conclusions and recommendations

196. **The Committee recommended that the General Assembly approve the revisions proposed by the Secretary-General to programme 17, Economic and social development in Latin America and the Caribbean, of the medium-term plan for the period 2002-2005, with the following modifications:**

Paragraph 17.3

- Retain the original wording of the text proposed for deletion — "Gender mainstreaming, consideration of environmental sustainability, institution-building and improvement of public regulation are priority aspects of such interrelationships" — in paragraph 17.3 of the medium-term plan for the period 2002-2005 (A/55/6/Rev.1);
- Add at the end of the second sentence the following: "The Monterrey Consensus, as adopted by the General Assembly, will also be regarded as a guideline to implement activities related to the programme of work of ECLAC."

Paragraph 17.22 (a)

Replace the text in bold type reading "and reduce poverty with a focus on gender inequality" with the words "and reduce poverty particularly with a focus on reducing gender inequality, in this regard".

Paragraph 17.22 (c) and (e)

- Retain the original wordings contained in paragraph 17.22 (c) and (e) of the medium-term plan for the period 2002-2005 (A/55/6/Rev.1);
- Retain the new text contained in paragraph 17.22 (c) and (e).

Paragraph 17.23 (b)

- Retain the original wording in paragraph 17.23 (b) of the medium-term plan for the period 2002-2005 (A/55/6/Rev.1) and renumber accordingly, as a new indicator;
- Retain the new text contained in paragraph 17.23 (b);
- Insert after "lessons learned" the phrase "with the assistance of the Economic Commission for Latin America and the Caribbean".

Paragraph 17.28 (c)

Replace the text of paragraph 17.28 (c) with the words "mainstreaming gender issues in public policy formulation and implementation in the relevant economic and social sectors".

Paragraph 17.50 (c)

- Retain the original wording in paragraph 17.50 (c) of the medium-term plan for the period 2002-2005 (A/55/6/Rev.1) and renumber accordingly, as a new indicator;
- Retain the new text contained in paragraph 17.50 (c).

Legislative mandates

Under General Assembly resolutions add: "56/178 International trade and development".

Subprogramme 4

Add General Assembly resolution: "52/194 Role of microcredit in the eradication of poverty".

Add General Assembly resolution: "56/202 Economic and technical cooperation among developing countries".

197. **The Committee recommended that the General Assembly, at its fifty-seventh session, further consider paragraph 17.21 of the programme.**

Programme 18
Economic and social development in Western Asia

198. At its 15th meeting, on 20 June 2002, the Committee considered the proposed revisions to programme 18, Economic and social development in Western Asia, of the medium-term plan for the period 2002-2005 (A/57/6 (Prog. 18)).

199. The representative of the Secretary-General introduced the proposed revisions and responded to questions raised during the Committee's consideration of the revisions.

Discussion

200. Support was expressed for the programme. It was noted that the proposed revisions represented a noticeable improvement in comparison with the current text of the programme.

201. The view was expressed that the goals of the revised programme were rather ambitious taking into account the resources available. The view was also expressed that the description of the main elements of the strategy to be pursued by the Economic and Social Commission for Western Asia (ESCWA) was overly broad, exceeded the scope of regional integration and should be reviewed to ensure that it reflected the capacity of the Secretariat. Under subprogramme 4, there were too many activities and therefore priorities should be defined. It was observed that the strategy relating to information technology was also very ambitious.

202. Concern was expressed that too many indicators of achievement were of a quantitative nature and could not be used for impact analysis of the progress achieved. The view was expressed that there was a need for better understanding of the role of indicators which should measure the performance of ESCWA, and not the performance of individual Member States.

203. The view was expressed that, under subprogramme 6, the goal should be to assist Member States in building their national statistical capacities.

204. Some delegations expressed the view that the references to "the right to development" contained in paragraphs 18.12 and 18.19 should be deleted, while others favoured their retention. The Committee could therefore not reach an agreement on this matter.

Conclusions and recommendations

205. **The Committee recommended that the General Assembly approve the revisions proposed by the Secretary-General to programme 18, Economic and**

social development in Western Asia, of the medium-term plan for the period 2002-2005, with the following modifications:

Paragraphs 18.5 (c) and 18.41 (d)

Replace the words "least advantaged" with the word "marginalized".

Paragraph 18.20 (b)

Replace the words "unemployment reduction, employment-linked education," with the words "unemployment reduction that employ innovative means like micro-credit, employment-linked education,".

Paragraph 18.22

Replace the existing text of item (e) with the following: "increase in the number of Member States addressing population and urban-governance related issues in their national policies".

Paragraph 18.30

Insert the word "information" between the words "goods", and "services";

Add the words "and the opportunities offered by" after the words "challenges posed by".

Paragraph 18.31 (b)

Replace the words "to minimize potential threats" with the words "to meet challenges".

Paragraph 18.40

In item (a), replace the words "policies in the development process" with the words "policies, strengthened institutional capacities and regulatory framework in the development process".

Paragraph 18.43

In the second sentence, after the word "compatible", insert the phrase ", as far as possible,".

Paragraph 18.51

Replace the existing text of item (a) with the words "increased number of Member States using statistical tools for data analysis, guided by international standards".

Legislative mandates

Under subprogrammes 1, 2 and 5, add General Assembly resolution: "56/202 Economic and technical cooperation among developing countries".

206. **The Committee also recommended that the General Assembly, at its fifty-seventh session, further consider paragraphs 18.12 and 18.19 of the programme.**

Programme 19
Human rights

207. At its 16th meeting, on 21 June 2002, the Committee considered the proposed revisions to programme 19, Human rights, of the medium-term plan for the period 2002-2005 (A/57/6 (Prog. 19)).

208. The representative of the Secretary-General introduced the proposed revisions and responded to the questions raised during the Committee's consideration of those revisions.

Discussion

209. Support for the programme and for the proposed revisions was expressed. The Secretariat was complimented for remaining within the confines of the approved medium-term plan.

210. A view was expressed that the right to development and research and analysis should have been proposed as two separate subprogrammes. It was also stated that it might be difficult to separate the right to development from the concept of human rights as a whole.

211. Concern was expressed that the expected accomplishments and measurements of achievement of Part A, Right to development, and Part B, Research and analysis, could not precisely reflect the objectives and strategies described under those parts.

212. Concern was also expressed regarding the reference, as a legislative mandate, to General Assembly resolution 56/266 of 27 March 2002 on the comprehensive implementation of and follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. General support was expressed for the reference to resolution 56/266 as an important contribution of the United Nations to the promotion of the eradication of racism, racial discrimination, xenophobia and related intolerance. In that regard, delegations also pointed to the need to include a particular reference to subprogramme 2, in particular after the adoption of the Durban Programme of Action and resolution 56/266.

213. Concern was furthermore expressed about an eventual allocation of resources to promote the right to development. The need was also expressed to provide all the necessary capacity and provisions in order to integrate the right to development in all programmes of the Organization.

214. The approach based on the indivisibility, interdependence and interrelatedness of all human rights referred to in paragraph 19.8 was commended.

215. One delegation expressed its concern and objection to the Declaration and resolutions on the right to development.

216. Views were expressed in favour of the inclusion of General Assembly resolution 56/146 on Equitable geographical distribution in the membership of the human rights treaty bodies as a legislative mandate of subprogramme 1, while views

were also expressed against such an inclusion. The Committee was therefore unable to reach a consensus on the matter.

Conclusions and recommendations

217. **The Committee recommended that the General Assembly approve the revisions proposed by the Secretary-General to programme 19, Human rights, of the medium-term plan for the period 2002-2005, with the following modifications:**

Paragraph 19.5 (a)

After the words "the right to development", add the words "aimed at the full realization of the right to development".

Paragraph 19.5 (b)

Delete the subparagraph.

Paragraph 19.5 (c)

Delete the words "all human rights, including".

Paragraph 19.7 (b)

- **After the word "mandates", insert the words "relevant to the right to development";**
- **After the words "given to the Secretariat", insert the words "including the holding of seminars and workshops organized by the Office of the United Nations High Commissioner for Human Rights".**
- **Delete the words "most recently";**

Paragraph 19.7 (c)

Delete the subparagraph.

Subprogramme 3

New paragraph 19.16 (d)

Under expected accomplishments: "Provision of the appropriate assistance to the Subregional Centre for Human Rights and Democracy in Central Africa to ensure its efficiency and smooth functioning".

New paragraph 19.18 (d)

Under measurements of achievement: "Appropriate assistance provided to the Subregional Centre for Human Rights and Democracy in Central Africa and its impact on the effective functioning of the Centre".

Legislative mandates

Programme 19

General Assembly resolutions

S-27/2 A world fit for children

Commission on Human Rights resolutions

2002/38 Torture and other cruel, inhuman or degrading treatment or punishment

Subprogramme 1

General Assembly resolutions

55/100 Respect for the right to universal freedom of travel and the vital importance of family reunification

55/192 Culture and development

Subprogramme 3

General Assembly resolutions

56/230 Subregional Centre for Human Rights and Democracy in Central Africa

56/253 Questions relating to the proposed programme budget for the biennium 2002-2003

218. **The Committee also noted the proposal to include under subprogramme 1 a reference to General Assembly resolution 56/146 on equitable geographical distribution in the membership of the human rights treaty bodies, and recommended that the General Assembly further consider and take appropriate action on the matter at its fifty-seventh session.**

Programme 24
Management and central support services

219. At its 16th meeting, on 21 June 2002, the Committee considered the proposed revisions to programme 24, Management and central support services, of the medium-term plan for the period 2002-2005 (A/57/6 (Prog. 24)).

220. The representative of the Secretary-General introduced the proposed revisions and responded to queries raised during the Committee's consideration of the programme.

Discussion

221. General support was expressed for the revisions to programme 24, Management and central support services.

222. A view was expressed that the capacity of the International Computing Centre should be utilized in implementing the results-based budgeting with a view to enhancing it as a management tool.

223. It was pointed out that subprogramme 3 was a subject of particular attention to the Fifth Committee of the General Assembly.

224. The view was expressed that the programme should have more emphasis on the provision of adequate services to Member States, in particular in the case of conference and support service.

Conclusions and recommendations

225. **The Committee recommended to the General Assembly the approval of the revisions proposed by the Secretary-General to programme 24, Management and central support services, subject to the following modifications:**

(a) In the last sentence of paragraph 24.1, retain the reference to resolution 53/221;

(b) In the second sentence of paragraph 24.2, replace the word "introduction" with the words "effective use" and replace the words "as a management tool for enhancing" with the words "which is intended to provide, in essence, a management tool that should enhance";

(c) In the third sentence of paragraph 24.10, replace the word "introduction" with the word "employment";

(d) In the fourth sentence of paragraph 24.14, after the word "concentrate", insert the words ", among other tasks," and replace the words "of mobility of staff to maximize its benefits for the Organization and further streamlining recruitment and placement procedures." with the words "for mobility of staff to maximize its benefits for the Organization, consistent with section V, paragraph 1, of General Assembly resolution 55/258".

Legislative mandates

Subprogramme 3

(e) Retain the reference to resolution 53/221 on human resources management.

Programme 25
Internal oversight

226. At its 16th meeting, on 21 June 2002, the Committee for Programme and Coordination considered programme 25, Internal oversight, of the medium-term plan for the period 2002-2005 (A/57/6 (Prog. 25)).

227. The representative of the Secretary-General introduced programme 25 and responded to queries raised during the Committee's consideration of the proposed revisions to the programme.

Discussion

228. Queries were raised regarding the proposed deletion of text related to the realignment of subprogrammes under programme 25. It was noted that the functions should not be deleted in their entirety from the programme, but only moved between subprogrammes in line with the reorganization. In particular, the view was expressed that the text proposed for deletion from the second sentence of paragraph 25.19 should be either reinstated or reflected under subprogramme 1.

229. The references to the Millennium Declaration were noted and clarification of the impact of the Millennium Declaration on the programme was sought.

230. The view was expressed that, taking into account the expected accomplishments outlined in paragraph 25.8, the related indicators of achievement in paragraph 25.9 should reflect, not only the number of recommendations, but also the follow-up to audit recommendations.

231. Clarification was sought on the status of the reorganization of the programme, as the wording in paragraph 25.3 could be interpreted as an indication that the realignment of the subprogrammes had not yet been implemented.

Conclusions and recommendations

232. **The Committee recommended that the General Assembly approve the revisions proposed by the Secretary-General to programme 25, Internal oversight, of the medium-term plan for the period 2002-2005, subject to the following modifications:**

Paragraph 25.2

Delete the new proposed text.

Paragraph 25.3

In the first sentence, replace the words "would realign the existing" with the words "has realigned the previous".

Paragraph 25.7

Retain the original wording — "undertake management audits, reviews and surveys to improve the structure of the Organization and its responsiveness to the requirements of programmes and legislative mandates" — of the medium-term plan for the period 2002-2005 (A/55/6/Rev.1).

Paragraph 25.9

Retain the original wording — "a more effective use of financial resources in order to guarantee the implementation of programmes and mandates and more effective procedures" — of the medium-term plan for the period 2002-2005 (A/55/6/Rev.1).

Paragraph 25.19

Amend the second sentence to read: "The Division, while providing management consulting services to improve the level of service delivery and to

enhance the Organization's responsiveness to the requirements of programmes and legislative mandates, will examine, review and appraise the use of financial resources in order to ensure the implementation of programmes and legislative mandates; and ascertain compliance of programme managers with the financial and administrative regulations and rules as well as with the approved recommendations of external oversight bodies".

Paragraph 25.20

Retain the original wording — "greater compliance with General Assembly directives, established regulations, rules, policies and procedures; enhancement of transparency and accountability within the Organization; and" — of the medium-term plan for the period 2002-2005 (A/55/6/Rev.1).

Paragraph 25.21

Delete the word "and" before (b), and add new text "and (c) the impact of management consulting recommendations made by the Office of Internal Oversight Services on the improvement of the implementation of programmes and activities of the Organization".

Paragraph 25.21

Retain the original wording — "and (d) better coordination with external oversight bodies" — of the medium-term plan for the period 2002-2005 (A/55/6/Rev.1).

Programme 26
Least developed countries, landlocked developing countries and small island developing States

233. At its 16th meeting, on 21 June 2002, the Committee considered the narrative of the newly established programme 26, Least developed countries, landlocked developing countries and small island developing States, of the medium-term plan for the period 2002-2005 (A/57/6 (Prog. 26)).

234. The representative of the Secretary-General introduced the proposed new programme and responded to queries raised during the Committee's consideration of the programme.

Discussion

235. Full support was expressed for the activities to be carried out by the Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, as described under the new programme 26 of the medium-term plan for the period 2002-2005.

236. Questions were raised regarding the organization of the office and the implementation of the programme of action within the three groups of countries under its aegis, as well as the relationships with the United Nations Conference on Trade and Development (UNCTAD) and the Office of the Special Coordinator for Africa and the Least Developed Countries. The representative of the Secretary-

General clarified that his office was working in close coordination with all the entities of the United Nations system involved. He indicated that the main responsibility of his office was to carry out effective coordination and monitoring of the implementation of the Programme of Action for the Least Developed Countries for the Decade 2001-2010 and the relevant programmes for landlocked developing countries and small island developing States, while UNCTAD focused on research and analytical activities, technical assistance and capacity-building. In that respect it was mentioned that the recurrent report on the least developed countries would continue to be prepared under the responsibility of UNCTAD but on a biennial as opposed to an annual basis.

237. It was felt that a reference to the outcome of the International Conference on Financing for Development (Monterrey, Mexico, March 2002) should be made in the overall orientation.

238. It was noted that the strategy was well spelled out, particularly with regard to maintaining of linkages with other parts of the United Nations system, and that it was in full accordance with the report of the Secretary-General entitled "Follow-up mechanism for coordinating, monitoring and reviewing the implementation of the Programme of Action for the Least Developed Countries for the Decade 2001-2010" (A/56/645). It was also noted that a strategy to avoid duplicative work should be included in order to reflect the creation of the Office of the High Representative.

239. It was noted that, in several paragraphs (e.g., paras. 26.5 and 26.7 (a)), reference was made to the least developed countries only and not to the landlocked developing countries and the small island developing States. It was considered that the document could be improved by including equal references to all three groups of countries considered by the programme. It was also suggested that the list of legislative mandates should be expanded in that respect.

240. It was mentioned that one of the priorities of the Office of the High Representative during the period 2002-2005 would be the preparation, coordination and follow-up of the International Ministerial Meeting of Landlocked and Transit Developing Countries and Donor Countries and International Financial and Development Institutions on Transit Transport Cooperation (General Assembly resolution 56/180, para. 13) and that the role of the Office of the High Representative in the coordination and the involvement of all United Nations agencies and other stakeholders in the preparatory process would be critical to the success of the meeting.

241. The view was expressed that one of the objectives of the programme was to assist the least developed countries in graduating from that category. Another view was that, while graduation was an important concept, it did not mean an automatic improvement of the conditions of life of the people concerned; what was important was to assist countries in improving their social indicators such as health, education, etc., so as to measure the progress made in the conditions and quality of life of their people.

242. The view was expressed that the indicators of achievement should be clear, precise and quantifiable in order to truly measure the progress achieved and the impact of activities. It was suggested that paragraph 26.9 should be expanded in that respect.

Conclusions and recommendations

243. **The Committee recommended that the General Assembly approve the text proposed by the Secretary-General for the new programme 26, Least developed countries, landlocked developing countries and small island developing States, for inclusion in the medium-term plan for the period 2002-2005, with the following modifications:**

Paragraph 26.4

In the first sentence, delete the words "and the subsequent report of the Secretary-General entitled 'Road map towards the implementation of the United Nations Millennium Declaration' (A/56/326)".

Paragraph 26.5

At the end of the paragraph, replace the words "reverse the trend by assisting countries in the implementation of the Programme of Action" with the words "help the least developed countries, landlocked developing countries and small island developing States to progress towards the achievement of the goals by assisting them in the implementation of the Brussels Programme of Action as well as the Global Framework for Transit Transport Cooperation between Landlocked and Transit Developing Countries and the Donor Community and the Barbados Programme of Action for the Sustainable Development of Small Island Developing States".

Paragraph 26.6

Insert the words "the follow-up and coordination of" after the words "Substantive responsibility for".

Paragraph 26.7 (a)

After "2001-2010", insert the phrase ", the Global Framework for Transit Transport Cooperation between Landlocked and Transit Developing Countries and the Donor Community and the Barbados Programme of Action for the Sustainable Development of Small Island Developing States".

Paragraph 26.7 (j)

After the word "Assisting", insert the phrase ", as appropriate,".

Paragraph 26.7 (k)

After the words "of these three groups", insert the phrase ", as well as other developing countries,".

Paragraph 26.8

At the end of the paragraph, add the words "as well as of the Global Framework for Transit Transport Cooperation between Landlocked and Transit Developing Countries and the Donor Community and the Barbados Programme of Action for the Sustainable Development of Small Island Developing States".

Paragraph 26.9 (b)

At the end of the subparagraph, add the words "as well as the Global Framework for Transit Transport Cooperation between Landlocked and Transit Developing Countries and the Donor Community and the Barbados Programme of Action for the Sustainable Development of Small Island Developing States."

Legislative mandates

Under "General Assembly resolutions", add:

"56/198 Further implementation of the outcome of the Global Conference on the Sustainable Development of Small Island Developing States

56/180 Specific actions related to the particular needs and problems of landlocked developing countries".

C. Evaluation

(Item 4 (c))

1. Strengthening the role of evaluation findings in programme design, delivery and policy directives

244. At its 3rd and 4th meetings, on 10 and 11 June 2002, the Committee considered the note by the Secretary-General transmitting the report of the Office of Internal Oversight Services (OIOS) on strengthening the role of evaluation findings in programme design, delivery and policy directives (A/57/68).

245. The Under-Secretary-General for Internal Oversight Services introduced the report.

Discussion

246. The Committee welcomed the report, noting that it was candid, straightforward, comprehensive and useful. It provided an honest assessment of the evaluation function, as currently practised within the United Nations. Concern was expressed at significant non-compliance by programme managers with the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation, in particular with regard to the evaluation function. It was noted that a culture of evaluation did not seem to have developed yet within the United Nations, and that evaluation had not been mainstreamed or given adequate priority.

247. The Committee regretted that the majority of programmes did not appear to have developed comprehensive evaluation plans as required by the Regulations and Rules Governing Programme Planning. It was regretted that only 15 programmes had adopted specific measures to enable the relevant intergovernmental bodies and specialized organs to review evaluation findings. The view was expressed that there should be a closer link between performance of management and resource allocation. However, it was recalled that during the Fifth Committee negotiations on results-based budgeting, the decision had been taken to de-link allocation of

resources from performance, and to focus instead on the review of factors that made programmes work well or not so well.

248. The Committee supported giving increased attention to self-evaluation. It was noted that some departments fully satisfied the requirements for self-evaluation, and it was hoped that others would follow that example with the help of OIOS. It was suggested that the Committee issue a recommendation to the Economic and Social Council requiring programme managers to undertake regular self-evaluations. It was also requested that the cost of self-evaluation to a department be identified in the programme budget. Observations were made on annex I of the report concerning the capacity within departments to undertake evaluation and the fact that some large programmes did not appear to have evaluation units. It was noted that OIOS itself had four Professional evaluators. The view was expressed that the Committee should encourage strengthening of the sections within OIOS that undertook evaluation.

249. The Committee was pleased that more training was being provided and the efforts undertaken by the Office of Programme Planning, Budget and Accounts on training for results-based budgeting, in accordance with General Assembly resolution 55/231. The hope was expressed that as the results-based budgeting methodology matured, improved self-evaluations would be produced efficiently with existing resources. Clarification was requested as to when the updated manual on evaluation would be published. It was emphasized that results-based budgeting, as adopted in resolution 55/231, should be complementary and not in contradiction with the evaluation of the Organization's programmes, as required by the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation (ST/SGB/2000/8).

250. A question was asked whether, in its evaluations, OIOS had given thorough consideration to programmes that had experienced a systematic increase of resource allocation during the previous biennium.

251. Support was expressed for the reduction in the number of in-depth evaluations from two to one per year, so that the evaluation report would be available for a review by intergovernmental bodies prior to review by the Committee. The innovative proposal to introduce thematic evaluations was welcomed, and it was noted that such evaluations would be of particular value for cross-cutting themes and would help to support the implementation of global programmes. Further clarification was requested on the feasibility, scope and criteria for selection of topics for those evaluations and the resources required. Further information was also requested on the experience of other agencies, such as the Food and Agriculture Organization of the United Nations and the United Nations Development Programme, in undertaking thematic evaluation. Concern was expressed regarding the impact of adopting thematic evaluations on the future periodicity of in-depth evaluation.

252. The view was expressed that the Joint Inspection Unit should be more involved in the preparation of in-depth evaluations with a view to complying with the request of the General Assembly in paragraph 16 of its resolution 56/245.

Conclusions and recommendations

253. **The Committee expressed concern that many programme managers did not carry out self-evaluations as stipulated in the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation. The Committee emphasized that heads of departments and offices were accountable to ensure fulfilment of the objectives of article VII of the Regulations and Rules concerning evaluation.**

254. **The Committee noted that the implementation of the results-based budgeting should enhance programme performance in a manner that was complementary to the existing evaluation system, in accordance with General Assembly resolution 55/231.**

255. **The Committee agreed with the proposal contained in the report on strengthening the role of evaluation findings, that the central evaluation activities implemented by the Office of Internal Oversight Services consist of one in-depth evaluation each year, releasing some of the existing capacity to:**

(a) Enhance support for self-evaluation by other departments and offices;

(b) Prepare one thematic evaluation on a cross-cutting theme from among the priority areas of work of the Organization included in the medium-term plan.

256. **The Committee recommended that the Secretary-General report on the implementation of the proposal contained in paragraph 255 (a) above, in the context of the biennial report of OIOS on strengthening the role of evaluation findings in programme design, delivery and policy directives.**

257. **With reference to paragraph 255 (b) above, the Committee requested the Secretary-General to entrust the Office of Internal Oversight Services to propose themes for consideration by the Committee at its forty-third session, at which time the Committee would consider commissioning a pilot project on one theme. The pilot project would subsequently be considered by the relevant intergovernmental bodies. The usefulness of that pilot project would be considered by the Committee at its forty-fifth session.**

258. **The Committee reiterated the need for evaluation of programme activities to be consistent with the provisions of regulation 7.1 of the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation.**

259. **The Committee recommended that the General Assembly approve the following schedule of in-depth evaluations (to be submitted to the Committee at its forty-third, forty-fourth and forty-fifth sessions, respectively):**

(a) Law of the sea and ocean affairs;

(b) Public administration, finance and development;

(c) Human settlements.

2. In-depth evaluation of the subprogrammes on General Assembly and Economic and Social Council affairs and Council support and coordination

260. At its 2nd, 3rd and 4th meetings, on 10 and 11 June 2002, the Committee considered the note by the Secretary-General transmitting the report of the Office of Internal Oversight Services on the in-depth evaluation of the subprogrammes on General Assembly and Economic and Social Council affairs and Economic and Social Council support and coordination (E/AC.51/2002/4).

261. The Under-Secretary-General for Internal Oversight Services introduced the report.

Discussion

262. The Committee welcomed the report, noting that it was useful, comprehensive and documented a number of good lessons. The Committee was pleased to see that the General Assembly and Economic and Social Council Affairs Division had overall provided efficient services. The view was expressed that the Division for Economic and Social Council Support and Coordination could be considered a model. Useful innovations such as organizing round tables, panel discussions, seminars and joint meetings with the Bretton Woods institutions were noted.

263. Support was expressed for a more active role of the Secretariat in making suggestions on the grouping and scheduling of agenda items, in submitting timely reports, in improving the utilization of meeting time at the beginning of sessions, and in advising non-governmental organizations on the process of application for consultative status.

264. The question was raised whether the lack of invitations to eminent persons explained the low participation of senior officials from United Nations organizations in the high-level segments, noted in table 4. Concern was expressed regarding the marginal participation of non-governmental organizations from Africa in the work of the Economic and Social Council and the question was raised whether insufficient public awareness was preventing them from increasing their number.

265. Concern was expressed that some recommendations were aimed at enhancing the role of the Secretariat with respect to aspects of matters which were the prerogative of Member States, including issues relating to streamlining the agenda of the General Assembly.

266. The following views were expressed regarding a number of recommendations presented in part one of the report:

(a) *Recommendation 1 (c)*. As the purpose of the joint meetings with the Bretton Woods institutions was to have a frank discussion, some delegations expressed the view that it might not be desirable to produce an outcome document, while others maintained that that represented a good idea;

(b) *Recommendation 1 (d)*. While it was felt that documentation should be provided in a timely fashion to delegations in Geneva, it was suggested that the briefing of delegations in Geneva should be done by the New York missions;

(c) *Recommendation 2*. Concern was expressed about establishing an indicative multi-year horizon for topics to be discussed and it was suggested that the Office of Internal Oversight Services re-examine that issue;

(d) *Recommendation 4.* Concern was expressed that the recommendation was in contradiction with the resolution adopted by the Second Committee every year on operational activities;

(e) *Recommendation 5.* Concern was expressed on the rescheduling of the Economic and Social Council segments throughout the year, because such a measure might affect the participation of small delegations, especially those from the developing countries;

(f) *Recommendation 6 (b).* The redesign of the Economic and Social Council web site was supported on the condition that such a change would be an enhancement and not a replacement of the existing system, which is widely used by many delegations;

(g) *Recommendation 7.* Delegations emphasized the role of the Committee on Non-Governmental Organizations in analysing the applications of non-governmental organizations seeking to obtain consultative status with the Economic and Social Council; on the question of enhancing the efficiency of the Committee on Non-Governmental Organizations, delegations were against the idea of limiting the discussion to previously asked questions, since such a measure could limit the participation of Member States on matters of concern to them.

267. Regarding matters addressed mainly in part two of the document, the Committee expressed serious concern about the continuing problem of the timely issuance of documents. The Committee stressed the importance of delegations' familiarizing themselves with the documents before the sessions and the need to consult their Governments in order to make statements. It was noted that the six-week rule was considered by the Office of Internal Oversight Services to be unrealistic, and clarification was sought on what a realistic deadline for circulating documents would be.

268. Regarding recommendation 1 (a) of part two, it was observed that the recommendation related to the grouping of agenda items and the revitalization of the General Assembly, which would be the subject of upcoming consultations. The issue should therefore not be considered by the Committee until the outcome of those consultations was known and further study of the impact of the recommendation had been made by the Committee.

269. It was further observed that recommendations 1 (a) and (b) of part two of the report were being addressed in the context of the process of reform of the Organization proposed by the Secretary-General in 1997, and they were not approved by the General Assembly. Other similar proposals were being considered in the context of the revitalization of the General Assembly.

270. The view was expressed that the proposals in paragraphs 77 and 78 could have been added to the recommendations presented in the report.

Conclusions and recommendations

271. **The Committee, having considered the report of the Office of Internal Oversight Services on the in-depth evaluation of the subprogrammes on General Assembly and Economic and Social Council affairs and Economic and Social Council support and coordination (E/AC.51/2002/4), concluded that the conclusions and recommendations included in part one of the report should be**

reviewed by the Economic and Social Council at its substantive session in July 2002 and by its relevant subsidiary bodies, as well as by the competent Main Committees of the General Assembly.

272. **The Committee noted that some of the recommendations contained in part two of the report related to issues that were being or had been conclusively discussed by the General Assembly and its relevant bodies under various items of the agenda and, in that regard, invited the Committee on Conferences to consider recommendations 1 (c) and (d) and 2 contained in the report, and stressed that, in considering recommendation 2, the need for the provision of adequate services to Member States be kept in mind.**

273. **The Committee, having considered the report of the Office of Internal Oversight Services, requested the Secretary-General to take into account the views of all Member States in future evaluation reports of the Office without a selective approach, and stressed the need for the conclusions and recommendations to be reflected objectively, while ensuring justifiability and transparency.**

274. **The Committee expressed deep concern about the question of late issuance of documentation and emphasized that the six-week rule should continue to be observed.**

3. In-depth evaluation of legal affairs

275. At its 4th meeting, on 11 June 2002, the Committee considered the note by the Secretary-General transmitting the report of the Office of Internal Oversight Services on the in-depth evaluation of legal affairs (E/AC.51/2002/5).

276. The Under-Secretary-General for Internal Oversight Services introduced the report. The representative of the Secretary-General responded to the questions raised during the Committee's consideration of the report.

Discussion

277. The Committee expressed satisfaction with the overall good performance of the Office of Legal Affairs. The Committee noted the efforts made by the Office to improve the quality of its services and the timeliness of its reports and also noted the additional measures needed to consolidate those improvements.

278. The Committee noted that there were legal aspects that needed to be attended to in all sectors of the Organization. The view was expressed that the Office of Legal Affairs should be considered as a centre for expertise and resources available to other departments and offices through training and secondment of staff as needed. It was also felt that there was a need for consistent legal expertise both in the contractual administration at Headquarters and in the field, especially in peacekeeping operations. It was noted that the response time to requests for legal advice needed to be shorter in certain circumstances.

279. The remark was made that, with regard to paragraph 10 of the evaluation report, it was not appropriate to characterize the view of one participant as being expressed by a larger group or a majority of Member States.

280. The Committee appreciated the use of model agreements. It was noted that model agreements could not apply in all cases and that there was a need to amend

standard texts in detail. The Committee supported the recommended establishment and maintenance of a reference collection of recent agreements and contracts, which would benefit Member States as well. Clarification was requested as to why the administrative instruction on the drafting of agreements with host countries had not been revised since 1987. Regarding the settlement of commercial claims made against the Organization, the view was expressed that it is important to consider conciliation before arbitration.

281. Coordination was pointed to as a concern owing to the large number of organizations involved in legal affairs. The view was expressed that the main themes of the in-depth evaluation were the need for coordination and the increased workload of the Office of Legal Affairs, and that the Fifth Committee should be made aware of the situation. It was noted that there was an increasing need for coordination in international trade law and that the staff of the International Trade Law Branch of the Office of Legal Affairs had been kept at their 1968 level, which was a worrying fact.

282. The Committee was pleased with the steps taken to resolve the problem of backlog in the publication of treaty and other legal material and trusted that the matter was being kept under constant review to achieve the elimination of backlog within a specified time frame. It was noted that the responsibility for delays in issuance of reports and publications was to be attributed to the special rapporteurs of the International Law Commission and the translation and document processing units of the Secretariat. The view was expressed that a recommendation could have been made on the matter.

283. With regard to recommendation 10 (a), the view was expressed that the matter was not within the competence of the Office of Legal Affairs. Concern was also expressed with recommendation 10 (b), under which the Office of Legal Affairs would prepare background documents on legal issues for delegations. It was not believed that such activity would be an appropriate use of the limited resources of the Office. It was also pointed out that there were existing backlogs that the Office should address prior to deploying its research resources in new areas. It was felt that recommendation 10 (b) could be of great benefit to the Sixth Committee in providing necessary background information on legal aspects of the topics that were rarely covered by United Nations bodies.

284. Views were also expressed that support provided by the Office of Legal Affairs to other departments and offices, at their request, should be developed through such measures as training and outposting of legal officers, as recommended in the in-depth evaluation. It was also felt that more attention should be given to regional issues in the context of fellowship programmes in international law, as recommended in the in-depth evaluation, and that the views of regional organizations should be sought.

285. It was furthermore mentioned that substantive evaluation of vendors' adherence to the basic values of the United Nations system should not be conducted by the Office of Legal Affairs, nor by legal advisers alone.

286. With respect to comments on legal topics requested from Member States, the view was expressed that the number of questionnaires sent to Member States exceeded their capacity to respond. In that regard, it was regretted that the evaluation report did not mention the recently adopted useful practice of addressing

specific questions to Member States for discussion during the debate of each item in the Sixth Committee.

287. Delegations considered that the departmental web site should be improved, in particular with a view to providing full-text materials free of charge and a balance between languages.

288. The efforts that the Office of Legal Affairs had made towards gender parity were noted with appreciation.

Conclusions and recommendations

289. **The Committee recommended approval of recommendations 1 to 7, 9 and 11 to 20 of the in-depth evaluation.**

290. **The Committee highlighted the importance of the Office of Legal Affairs and of the central legal services, which might be needed in all areas of the Organization.**

4. Triennial review of the implementation of the recommendations made by the Committee at its thirty-ninth session on the in-depth evaluation of the disarmament programme

291. At its 3rd and 4th meetings, on 10 and 11 June 2002, the Committee considered the note by the Secretary-General transmitting the report of the Office of Internal Oversight Services on the triennial review of the implementation of the recommendations made by the Committee for Programme and Coordination at its thirty-ninth session on the in-depth evaluation of the disarmament programme (E/AC.51/2002/6).

292. The Under-Secretary-General for Internal Oversight Services introduced the report.

Discussion

293. The view was expressed that it was essential that the Department for Disarmament Affairs sustain its interaction with other treaty and regional organizations, and support was expressed for the efforts being made by the Department in that regard.

294. Concerns were raised as to the lack of regular budget funds to support the maintenance and administrative costs of the regional centres for peace and disarmament. It was noted that this was frequently a requirement for donor countries to contribute to the activities of the centres.

295. Regarding access to the databases of relevant departments, clarification was sought as to what was meant by the term "thorough consultations" in the final paragraph of the summary of the report.

296. The view was expressed that, in terms of the Department's advocacy efforts, which have been very useful, in some instances the countries concerned were unable to take follow-up action owing to their own technical and resource constraints. Therefore, the non-ratification of a treaty or convention by a country should not reflect on the Department's own performance but was sometimes due to external factors.

Conclusions and recommendations

297. **The Committee recommended approval of the conclusions of the triennial review.**

298. **The Committee recommended that the triennial review and the Committee's conclusions on it be submitted to the First Committee of the General Assembly at its fifty-seventh session for review.**

5. Triennial review of the implementation of the recommendations made by the Committee at its thirty-ninth session on the in-depth evaluation of the electoral assistance programme

299. At its 3rd and 4th meetings, on 10 and 11 June 2002, the Committee considered the note by the Secretary-General transmitting the report of the Office of Internal Oversight Services on the triennial review of the implementation of the recommendations made by the Committee for Programme and Coordination at its thirty-ninth session on the in-depth evaluation of the electoral assistance programme (E/AC.51/2002/7).

300. The Under-Secretary-General for Internal Oversight Services introduced the report.

Discussion

301. The Committee expressed appreciation for the work performed by the Electoral Assistance Division in support of the democratization process, emphasizing the importance of carefully assessing conditions in countries requesting assistance before authorizing it. The Committee noted favourably the Division's support to the electoral process in Fiji, the development of a joint Department of Political Affairs/United Nations Development Programme (UNDP) note of guidance and with the Division's participation in various electoral networks. It was also suggested that the White Helmets Initiative could be further explored as a useful tool in the provision of electoral assistance.

302. Support was expressed for all the recommendations, particularly for the need to expedite the allocations of responsibilities among the various relevant organizations of the United Nations system, greater participation in lessons learned by other organizations of the United Nations system and better integration of gender mainstreaming in the activities of the Division.

303. Clarification was requested on: (a) what specific actions were taken by the Division to solicit extrabudgetary funds; (b) the relationship between the note of guidance and the UNDP programme manual; and (c) what actions should be taken to better integrate gender mainstreaming in the activities of the Division.

304. The usefulness of spreading the practice of memorandum of understanding and agreements was emphasized, as well as the importance of the delivery of technical cooperation on electoral legislation prior to the electoral processes for which assistance is requested.

Conclusions and recommendations

305. **The Committee recommended that the General Assembly approve recommendation 3 of the triennial review of the implementation of the**

recommendations made by the Committee for Programme and Coordination at its thirty-ninth session on the in-depth evaluation of the electoral assistance programme (E/AC.51/2002/7).

306. **The Committee, having considered the triennial review, recommended that recommendations 1 and 2 be submitted to the Third Committee of the General Assembly, at its fifty-seventh session, for its consideration.**

Chapter IV
Coordination questions

(Item 5 (a))

A. Annual overview report of the United Nations System Chief Executives Board for Coordination for 2001

307. At its 6th meeting, on 13 June 2002, the Committee for Programme and Coordination considered the annual overview report of the United Nations System Chief Executives Board for Coordination (CEB) for 2001 (E/2002/55). The representative of the Secretary-General introduced the report and responded to queries raised during the Committee's consideration of the report.

Discussion

308. It was noted that the annual overview report of CEB for 2001 was comprehensive and provided a good snapshot of the functioning of CEB and its new high-level committees, as well as of the efforts of the organizations of the United Nations system to work together, promoting coherence and synergies, avoiding duplication and maximizing the effectiveness of their work. The various examples cited in the report under three clusters — development and poverty eradication, health and protecting the common environment — were welcomed because they demonstrated the manner in which the system was working together in selected specific areas.

309. The view was expressed that the level of inter-agency coordination in the budgetary field had decreased recently, and that effective and immediate measures should be taken by CEB and its relevant structures to address that problem, especially in view of the need for effective coordination and cooperation between United Nations agencies and organizations in the budgetary field (i.e., exchange of experience, information, techniques and best practices, inter alia, in the area of results-based budgeting). It was also stressed that CEB should reflect the practical results of its reform and its influence on the different areas of inter-agency coordination in its annual reports.

310. It was noted that CEB had made considerable progress in performing its critical role of ensuring and enhancing system-wide coordination of the efforts of the organizations of the United Nations system. It was observed that that function had become even more important in view of the continuing worldwide trend of globalization, as well as the recent decision of the United Nations system to consider the United Nations Millennium Declaration as the overarching policy framework for its programmes and activities in the economic and social sectors.

311. Appreciation was expressed for the continuing attention devoted by CEB to the issues of globalization and its multifaceted dimensions, as well as its relationship to the ongoing efforts of the organizations of the United Nations system in the framework of the follow-up to the Millennium Summit. The report highlighted some of the concerns of the members of CEB in relation to the process of globalization and their efforts to address them. Note was taken in that regard of the Board's consideration of policy measures required to make globalization a positive force for all. Note was also taken of a policy paper prepared by the Director-General of the

International Labour Organization on an integrated approach to policy formulation identifying the social consequences of globalization, whose conclusions were considered to be significant. The observation was made that it would be necessary to elaborate unified strategies to be followed by organizations of the United Nations system, including the Bretton Woods institutions, and by civil society organizations to help manage the process of globalization. The question was raised why the annual overview report had focused only on the negative aspects of globalization. It was explained that the important thing was to ensure that globalization worked for all so that its negative effects were minimized and its positive aspects maximized: the report had consequently dwelt on both its negative and positive dimensions. By drawing attention to its negative aspects, it was hoped that executive heads of the organizations of the United Nations system would take appropriate measures to minimize those aspects that would adversely affect the efforts of the United Nations system towards the achievement of the millennium development goals. It was acknowledged that although much had been achieved by the United Nations system, efforts should continue to develop more coherent approaches to all aspects of globalization. On the other hand, the view was also expressed that the report was well balanced on the question of globalization. Another view was raised concerning the necessity of a coherent and coordinated response of the United Nations system vis-à-vis differential access to the benefits of the globalization.

312. A number of issues were raised concerning the millennium development goals, including the status of the goals and whether they had been agreed upon by Member States and whether indeed they constituted the development goals that should be pursued by the United Nations system; whether specific measures were required to address each of the millennium development goals; and finally, whether the Millennium Declaration was the only framework for directing the activities of the United Nations system. It was explained that the Declaration had been adopted unanimously by heads of State and Government at the Millennium Summit and that it represented the expression of international consensus at the highest possible level, while at the same time providing a broad framework for actions in the economic and social sectors that drew upon the summits and international conferences of the 1990s. It should thus be quite natural for the system to regard the millennium development goals as an overarching framework for its work. They had been derived from the Declaration as a set of priority development goals to be collectively addressed by the United Nations system organizations. It was also mentioned that each of the goals was being addressed system-wide under the coordination of CEB. It was further confirmed that the pilot inventory undertaken by CEB had indeed been extremely helpful in showing how the activities of the system were contributing to the accomplishment of the goals and in identifying areas in which enhanced efforts were required. In that sense, the inventory was helpful, although it could not be an all-embracing and comprehensive document covering every aspect of the work of the United Nations system. It was also explained that in a similar manner, the examples of successful system-wide inter-agency initiatives and efforts cited in the report did not represent the totality of such initiatives being pursued by organizations of the system, nor, because they were merely a selection, could they include each organization of the system. Those examples were intended merely to demonstrate a cross-section of the types of system-wide initiatives being successfully organized by the organizations of the United Nations system, and the fact that certain agencies were not mentioned among them did not imply at all that they were not interested or not participating.

313. Appreciation was expressed for the efforts of the Secretary-General to reform the former Administrative Committee on Coordination (ACC) and its subsidiary machinery and transform it to the current CEB. The Committee welcomed the successful completion of that process of transition as reported in the report, noting with satisfaction the creation of the High-level Committee on Programmes and the High-level Committee on Management; the ad hoc inter-agency networks operating with the help of information technologies; the time-bound, task-oriented task forces under lead-agency arrangements; and the consolidation of the CEB secretariat. Although support was expressed for the new approaches to coordination, a number of observations were made concerning the change of name to CEB; the new modalities of coordination and the new methods of work of CEB and its two high-level committees; the workings of the informal networks of specialists; cost-sharing arrangements; and the consolidation of the CEB secretariat. A number of issues were clarified concerning the functioning of CEB and its high-level committees, including that the responsibility for managing security arrangements rested entirely with the new mechanism established by the General Assembly; that the new arrangements for coordination in different sectors had been designed to allow greater flexibility and provide opportunities for introducing innovative modalities and involving, where necessary, civil society (non-United Nations actors) and a programme that was driven not by calendar but by substance. In addition, the new arrangements would encourage the system to address problems as they arose without having to wait for the next scheduled meeting.

314. The efforts of CEB to promote sustainable development in Africa were noted and support was expressed for the priority attention being given by CEB to the New Partnership for Africa's Development (NEPAD). It was also observed that strong endorsement by CEB of NEPAD as an African-owned, African-led initiative, implemented by Africans themselves, might imply that the United Nations system was disengaging from African development programmes. It was explained that national development was first and foremost the responsibility of national Governments. In NEPAD, African leaders had accepted the responsibility of promoting sustainable development of their continent through a process that was owned and led by them. The United Nations system was committed to fully supporting the African leaders in that important task. The Committee welcomed the decision of CEB that all of its member organizations should review their programmes with regard to supporting NEPAD. A query was raised on the status of NEPAD, and it was explained that the Economic and Social Council had already endorsed the new African initiative, as had the Group of Eight Major Industrialized Countries (G-8). It was also explained that African leaders were currently elaborating an action plan that was to be presented at the forthcoming G-8 meeting in Canada. That and the commitment of the United Nations system to supporting sustainable development of Africa were sufficient grounds for the organizations of the United Nations system to rally behind NEPAD. It was also explained that CEB, in order to ensure a coherent and disciplined support for NEPAD, was coordinating system-wide approaches through the Executive Director of the Economic Commission for Africa (ECA), who acted as the interlocutor of the United Nations system vis-à-vis the Heads of State Implementation Committee of NEPAD. That arrangement had worked well; regional consultations organized by ECA had helped to identify seven priority areas, as well as United Nations system lead agencies which would, in accordance with their mandates, be responsible for supporting NEPAD in relevant areas. In addition, many executive heads also maintained direct

contacts with the Heads of State Implementation Committee concerning their respective mandates.

315. It was stressed that, in the area of assistance to countries invoking Article 50 of the United Nations Charter, CEB and its relevant structures should pay particular attention to the analysis of specific problems faced by those countries and should develop new proposals and mechanisms for the practical response of the United Nations system in order to provide assistance to third States affected by the implementation of sanctions imposed by the Security Council. It was further noted that methodology for estimating damage caused by sanctions to third States and the relevant compensations scale should be developed. Within the United Nations system, focal "sponsors", capable of leading compensational projects, should be determined from among international financial institutions (i.e., the International Monetary Fund, the World Bank). At the same time, the Security Council's prerogatives in that area should be fully respected. It was also noted that mechanisms should be developed for financing specific sectors of the economy of countries damaged by sanctions on third States invoking Article 50. In that regard, it was stated that the United Nations system's financial institutions and development agencies should be fully engaged.

Conclusions and recommendations

316. **The Committee took note with appreciation of the annual overview report of CEB for 2001 (E/2002/55). It particularly noted the improved format of the report, which more fully responded to concerns raised by the Committee in the past, and especially welcomed the examples cited in the report concerning system-wide initiatives for promoting synergies and coherence in the actions of the organizations of the United Nations system.**

317. **The Committee affirmed its support for the crucial role of CEB in coordinating the efforts of the organizations of the United Nations system to pursue system-wide implementation of the development goals contained in the United Nations Millennium Declaration, which served as the overarching framework for the activities of the United Nations system in the follow-up to the Millennium Summit.**

318. **The Committee recommended that CEB continue to give attention to helping advance unified system-wide strategies to make globalization work as a positive force for all and to strengthen the unique abilities of the United Nations system in coordinating international efforts to help solve social, economic, political and environmental and humanitarian problems in the era of globalization, in particular through the achievement of the development goals of the Millennium Declaration. The Committee further requested information on significant developments in that regard in the context of future CEB annual overview reports.**

319. **The Committee noted the view expressed by CEB that a substantial increase in official development assistance to Africa was one of several crucial conditions required for renewed progress in Africa. The Committee expressed its support for the priority attention given by CEB to the sustainable development of Africa and for its efforts to foster system-wide commitments by organizations of the United Nations system, as well as its role in coordinating the implementation of relevant intergovernmental mandates for systematically**

mobilizing the necessary support for NEPAD. The Committee requested that CEB continue to monitor and report on system-wide support for the NEPAD initiative in the context of its annual overview reports.

320. **The Committee noted with satisfaction the transition of former ACC and its subsidiary machinery to CEB, which should assist CEB in better implementing its tasks to strengthen coordination in the United Nations system, and in that regard recommended that CEB reflect the practical results of its transition in its annual report.**

321. **The Committee stressed that inter-agency coordination in the field of management should be further strengthened, and recommended that progress made in that regard be reflected in future CEB reports.**

322. **The Committee reaffirmed the important role of CEB in coordinating the implementation of the relevant intergovernmental mandates for mobilizing and monitoring the economic assistance provided by the international community and the United Nations system to States confronted with special economic problems arising from the implementation of preventive or enforcement measures imposed by the Security Council, and in identifying solutions to the special economic problems of those States and providing support to the efforts of States affected by the developments in the Balkans for their economic recovery, structural adjustment and development, and in that regard recommended that CEB continue to report on the progress of its work in that field in the context of its annual overview reports.**

323. **The Committee recommended that CEB give due attention to an analysis of specific problems facing countries invoking Article 50 of the United Nations Charter, and that it consider improving procedures for consultations to maintain a constructive dialogue with such States, including through regular and frequent meetings and, where appropriate, special meetings between affected third States and the donor community, with the participation of United Nations agencies and other international organizations.**

B. United Nations System-wide Special Initiative for the Implementation of the United Nations New Agenda for the Development of Africa in the 1990s

(Item 5 (b))

324. At its 7th and 8th meetings, on 13 June 2002, the Committee for Programme and Coordination considered the report of the Secretary-General on the United Nations System-wide Special Initiative on Africa in the context of the final evaluation of the United Nations New Agenda for the Development of Africa in the 1990s (E/AC.51/2002/8).

325. The Special Coordinator for Africa and the Least Developed Countries introduced the report and responded to questions raised during the Committee's consideration of it.

Discussion

326. Appreciation was expressed for the report on the United Nations System-wide Special Initiative on Africa, which was considered to be frank and comprehensive.

327. There was general acknowledgement that after five years of the Special Initiative as the implementing arm of the United Nations New Agenda for the Development of Africa in the 1990s, its task was done. Its performance was mixed, falling short of the expected goals. This was due in part to the fact that it was conceived on too large a scale; it was an initiative tailored for Africa but designed by others; and it lacked sufficient resources to bring it to fruition. In addition, the lack of effective teamwork among those entrusted with the management of the Special Initiative also led to its poor performance.

328. Nonetheless, there was broad agreement that while the Special Initiative had fallen short in its performance, the experience had provided useful lessons for the future coordination of the United Nations system. The New Partnership for Africa's Development was hailed as an African-designed initiative, which has many prospects for success. It was further stated that as an African initiative, the responsibility for its implementation should rest with African countries, with the United Nations system playing a supporting role alongside other donors. Some delegations expressed the view that priority should be given to HIV/AIDS in the implementation of the Partnership. Emphasis should be placed on building African capacity.

329. Questions were raised about the nature of the interface of the United Nations system with the New Partnership for Africa's Development. It was felt that it was imperative that all United Nations agencies collaborate and pool their diverse and immense expertise in supporting the Partnership. In this respect, the need to develop a strategic operational framework to guide United Nations intervention with respect to the Partnership was stressed. It was also noted that the Partnership would be a useful mechanism for coordinating United Nations development work for Africa and for achieving the objectives set out in the Millennium Declaration related to meeting the special needs of Africa.

330. It was acknowledged that the various trade and aid initiatives of several donors, including Japan, the United States of America and the European Union, needed to be dovetailed in support of the New Partnership for Africa's Development. There was a need for bilateral donors to be engaged in the process and to support the initiative if it was to stand a chance of succeeding.

331. It was emphasized that the Committee for Programme and Coordination should play an important advocacy role, in addition to monitoring the support of the United Nations system for the Partnership. Particular emphasis was placed on the need for a large resource mobilization effort for the programme, given that the lack of resources was a key impediment to the success of the performance of the Special Initiative.

332. Attention was drawn to the need to identify the role of the relevant structures within the United Nations Secretariat, including the Office of the Special Coordinator for Africa and the Least Developed Countries, the Economic Commission for Africa (ECA) and the United Nations Development Programme in support of the Partnership. A renewed and strengthened Office of the Special Coordinator was described as essential to that effort. Moreover, an appropriate intergovernmental mechanism was also needed to periodically monitor and review the support provided by the United Nations system for the New Partnership for Africa's Development, which would report to the Economic and Social Council and

the General Assembly with measures to be taken to enhance United Nations support for the Partnership.

333. In conclusion, it was explained that the United Nations system had established multi-layered links with the Partnership. ECA was the main interlocutor with the Heads of State Implementation Committee and the Steering Committee of the New Partnership for Africa's Development, and it has assisted in drawing up indicators for economic and corporate governance. The Steering Committee has directly contacted various agencies and organizations of the United Nations system to solicit their assistance. Moreover, the United Nations System Chief Executives Board for Coordination (CEB) and the High-level Committee on Programmes discussed extensively modalities for United Nations system response to the Partnership. Lessons learned from the Special Initiative and the United Nations New Agenda for the Development of Africa in the 1990s would prove useful in tailoring the response to the Partnership. It is to be borne in mind that coordination was most effective at the country level, where Governments should take the lead.

Conclusions and recommendations

334. **The Committee emphasized that the development needs of Africa should remain a high priority on the agenda of the United Nations system.**

335. **The Committee emphasized the importance of applying the lessons learned from the United Nations System-wide Special Initiative on Africa to the implementation of the New Partnership for Africa's Development. It was concluded that the Special Initiative had improved inter-agency coordination in Africa and that the thematic cluster arrangements had proved to be particularly useful in fostering inter-agency collaboration at the country and regional levels.**

336. **The Committee noted that the United Nations system, through CEB, had adopted a three-pronged policy towards the New Partnership for Africa's Development, emphasizing the need for the United Nations system to exercise restraint in launching new initiatives, to unite in supporting African-owned and Africa-led initiatives and to promote inter-agency coordination. The Committee stressed the important decisions to be taken by CEB on future United Nations support for programmes in Africa.**

337. **The Committee underlined the need for agencies and organizations of the United Nations system to support the New Partnership for Africa's Development. In this regard, the Committee recommended that the United Nations system articulate a strategic operational framework for supporting its implementation. It was recommended that the proposed framework highlight problems, set goals, determine the respective roles of organizations, indicate resource requirements and introduce performance indicators.**

338. **The Committee emphasized that it should accordingly be involved in monitoring whatever framework the agencies adopt to support the Partnership. It recommended that the Secretary-General be requested to report to the Committee at its forty-third session on the future engagement of the United Nations system with the Partnership.**

Chapter V

Report of the Joint Inspection Unit

(Item 6)

Strengthening the investigations function in United Nations system organizations

339. At its 6th meeting, on 12 June 2002, the Committee considered the report of the Joint Inspection Unit entitled "Strengthening the investigations function in United Nations system organizations" (A/56/282), and the comments of the Secretary-General, as well as those of the United Nations System Chief Executives Board for Coordination thereon (A/56/282/Add.1). The report of the Joint Inspection Unit was introduced by Inspector Khalil Issa Othman.

Discussion

340. The report of the Joint Inspection Unit was appreciated. Views were expressed that the report dealt with a very important component of oversight, namely, that of investigation, and that it built upon previous Joint Inspection Unit reports on oversight. It was considered that the report was informative, timely and topical and its specific recommendations were helpful to the Member States and the secretariats of the United Nations system organizations.

341. There was general endorsement of its recommendations on their own merit and taking into account the information given on endorsement by other governing bodies of United Nations system organizations of those recommendations.

342. Views were also expressed that a number of the comments of the Secretary-General on the report, and especially on specific recommendations, should be considered.

343. The view was expressed that the report would have been more useful to Member States had it provided more analysis of the situation in different organizations.

344. Views were expressed that the report could have also been more beneficial had the views of the different organizations on different issues been more specific.

345. There was general agreement on having recognized common standards and procedures for investigations, especially in view of the conclusions of the Third Conference of International Investigators of United Nations Organization and Multilateral Financial Investigations (7 and 8 March 2002, Washington, D.C.) and the adoption of a "Uniform Standards for Investigations" by the Conference.

346. Views were expressed that the standards and procedures might be further adapted to the circumstance of each organization.

347. Views were also expressed that the comments of the Secretary-General on this issue, especially the legal implications, should be considered.

348. On the issue of training of managers, questions were raised as to the desirability of involving managers in investigation. Views were expressed that it was better to leave that function to qualified investigators. Other views expressed were

along the lines of the report of the Joint Inspection Unit, namely, that since managers do carry out investigations in the absence of qualified investigators, there was a need for training managers in recognized standards and procedures in order to minimize the risks to the investigative process.

349. There was general agreement on the need for a professional investigations capability in each organization and that a risk profile and analysis be undertaken by executive heads of each organization for subsequent consideration by their respective legislative bodies.

350. Views were expressed on options for financing access of small organizations to professional investigations capability and that such options and others be also considered in conjunction with the Office of Internal Oversight Services review being presently carried out on the subject.

351. General agreement was voiced on the issue of organizations adopting preventive measures based on proactive investigations and lessons learned from completed investigations. Views were expressed that proactive investigations were considered to be topical issues for the future.

352. Questions were raised about the distinction between the functions of investigation and inspection; and between investigators and auditors. Reference was made to such a distinction including references to such discussion in the Joint Inspection Unit report.

353. Although not included in the report, a question was raised as to the efficacy of having "resident investigators" in major peacekeeping or humanitarian missions.

354. Concerns were raised about the time lapse between the issuance of the Joint Inspection Unit report and of the comments of the Secretary-General thereon.

355. Views were expressed regarding the desirability of having the comments of the different organizations on the substance and recommendations included in the Joint Inspection Unit reports. It was noted that such views were being favourably considered by the Unit. A number of Joint Inspection Unit reports included such information, but it remained to become more standardized.

Conclusions and recommendations

356. **The Committee welcomed the report of the Joint Inspection Unit on strengthening the investigations function in the United Nations system organizations (A/56/282) and found it informative, timely and useful.**

357. **The Committee recommended that the General Assembly approve recommendations 1, 3, 4, 5 and 6, as contained in the report of the Joint Inspection Unit.**

358. **The Committee also recommended approval of recommendation 2 on training managers who are already involved in investigative activities, owing to the absence of qualified and experienced investigators on established standards and procedures of investigations, with the understanding that caution will be exercised to ensure that the managers' independence and impartiality in their areas of responsibility is guaranteed, and that clear guidelines spelling out the extent of their involvement at all stages of the investigations process will be provided.**

A/57/17

United Nations

Report of the United Nations Commission on International Trade Law on its thirty-fifth session

17-28 June 2002

General Assembly

Official Records
Fifty-seventh session
Supplement No. 17 (A/57/17)

General Assembly
Official Records
Fifty-seventh session
Supplement No. 17 (A/57/17)

Report of the United Nations Commission on International Trade Law on its thirty-fifth session

17-28 June 2002

United Nations • New York, 2002

Note

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

ISSN 0251-9127

[Original: English]
[18 July 2002]

Contents

Chapter		*Paragraphs*	*Page*
I.	Introduction	1-2	1
II.	Organization of the session	3-12	1
	A. Opening of the session	3	1
	B. Membership and attendance	4-8	1
	C. Election of officers	9	2
	D. Agenda	10	2
	E. Establishment of a Committee of the Whole	11	2
	F. Adoption of the report	12	2
III.	Draft UNCITRAL Model Law on International Commercial Conciliations	13-177	2
	A. General remarks	13	2
	B. Title	14	3
	C. Consideration of draft articles	15-140	3
	D. Adoption of the UNCITRAL Model Law on International Commercial Conciliation	141	21
	E. Draft Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Conciliation	142-177	22
IV.	Arbitration	178-184	28
V.	Insolvency law	185-197	29
VI.	Security interests	198-204	31
VII.	Electronic commerce	205-209	33
VIII.	Transport law	210-224	34
IX.	Privately financed infrastructure projects	225-233	36
X.	Monitoring implementation of the 1958 New York Convention	234-236	38
XI.	Enlargement of the membership of the Commission	237-239	38
XII.	Case law on UNCITRAL texts (CLOUT)	240-243	39
	A. Case law	240-242	39
	B. Digest of case law on the United Nations Sales Convention	243	39
XIII.	Training and technical assistance	244-251	40
XIV.	Status and promotion of UNCITRAL legal texts	252-255	41

XV.	General Assembly resolutions on the work of the Commission	256-271	42
XVI.	Coordination and cooperation	272-278	47
	A. Asian-African Legal Consultative Organization	272	47
	B. International Development Law Institute	273-277	47
	C. Global Center for Dispute Resolution Research	278	48
XVII.	Other business	279-294	48
	A. Possible study of commercial and financial fraud	279-290	48
	B. Bibliography	291	50
	C. Willem C. Vis International Commercial Arbitration Moot	292-293	51
	D. UNCITRAL web site	294	51
XVIII.	Date and place of future meetings	295-297	51
	A. Thirty-sixth session of the Commission	295	51
	B. Sessions of working groups up to the thirty-sixth session of the Commission	296	51
	C. Sessions of working groups after the thirty-sixth session of the Commission in 2003	297	52

Annexes

I.	UNCITRAL Model Law on International Commercial Conciliation	54
II.	List of documents before the Commission at its thirty-fifth session	59

I. Introduction

1. The present report of the United Nations Commission on International Trade Law (UNCITRAL) covers the thirty-fifth session of the Commission, held in New York from 17 to 28 June 2002.

2. Pursuant to General Assembly resolution 2205 (XXI) of 17 December 1966, this report is submitted to the Assembly and is also submitted for comments to the United Nations Conference on Trade and Development.

II. Organization of the session

A. Opening of the session

3. UNCITRAL commenced its thirty-fifth session on 17 June 2002. The session was opened by the Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations, Hans Corell.

B. Membership and attendance

4. The General Assembly, in its resolution 2205 (XXI), established the Commission with a membership of 29 States, elected by the Assembly. By its resolution 3108 (XXVIII) of 12 December 1973, the Assembly increased the membership of the Commission from 29 to 36 States. The current members of the Commission, elected on 24 November 1997 and on 16 October 2000, are the following States, whose term of office expires on the last day prior to the beginning of the annual session of the Commission in the year indicated:[1] Argentina (2004, alternating annually with Uruguay), Austria (2004), Benin (2007), Brazil (2007), Burkina Faso (2004), Cameroon (2007), Canada (2007), China (2007), Colombia (2004), Fiji (2004), France (2007), Germany (2007), Honduras (2004), Hungary (2004), India (2004), Iran (Islamic Republic of) (2004), Italy (2004), Japan (2007), Kenya (2004), Lithuania (2004), Mexico (2007), Morocco (2007), Paraguay (2004), Romania (2004), Russian Federation (2007), Rwanda (2007), Sierra Leone (2007), Singapore (2007), Spain (2004), Sudan (2004), Sweden (2007), Thailand (2004), the former Yugoslav Republic of Macedonia (2007), Uganda (2004), United Kingdom of Great Britain and Northern Ireland (2007) and United States of America (2004).

5. With the exception of Benin and Rwanda, all the members of the Commission were represented at the session.

6. The session was attended by observers from the following States: Australia, Belarus, Bulgaria, Chile, Congo, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Finland, Gabon, Greece, Guatemala, Indonesia, Iraq, Kuwait, Lesotho, Libyan Arab Jamahiriya, Luxembourg, Malta, Oman, Peru, Philippines, Portugal, Qatar, Republic of Korea, Saudi Arabia, Slovakia, Slovenia, South Africa, Switzerland, Turkey, Ukraine, Uruguay and Venezuela.

7. The session was also attended by observers from the following international organizations:

(a) **United Nations system**: United Nations Development Programme;

(b) **Intergovernmental organizations**: Asian-African Legal Consultative Organization, Asian Clearing Union, East African Development Bank (EADB), International Development Law Institute and Permanent Court of Arbitration;

(c) **Non-governmental organizations invited by the Commission**: American Arbitration Association (AAA), American Bar Association, Cairo Regional Centre for International Commercial Arbitration, Centre d'Arbitrage du Rwanda, Chartered Institute of Arbitrators, Global Center for Dispute Resolution Research, Institute of International Banking Law Practice, Inter-American Bar Association, International Chamber of Commerce, International Council for Commercial Arbitration, International Cotton Advisory Committee, International Maritime Committee, International Union of Marine Insurance, North American Free Trade Agreement (NAFTA) Advisory Committee on Private Commercial Disputes, School of International Arbitration, University of the West Indies and U.S.-Mexico Conflict Resolution Center.

8. The Commission was appreciative of the fact that international non-governmental organizations that had expertise regarding the major items on the agenda of the current session had accepted the invitation to take part in the meetings. Being aware that it was crucial for the quality of texts formulated by the Commission that relevant non-governmental organizations should

participate in the sessions of the Commission and its working groups, the Commission requested the Secretariat to continue to invite such organizations to its sessions based on their particular qualifications.

C. Election of officers

9. The Commission elected the following officers:

Chairman:	Henry M. Smart (Sierra Leone)
Vice-Chairmen:	Guillermo Francisco Reyes (Colombia) Lászlo Milassin (Hungary) Vilawan Manglatanakul (Thailand)
Rapporteur:	David Morán Bovio (Spain)

D. Agenda

10. The agenda of the session, as adopted by the Commission at its 739th meeting, on 17 June 2002, was as follows:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Finalization and adoption of the draft UNCITRAL Model Law on International Commercial Conciliation.
5. Insolvency law: progress report of Working Group V.
6. Security interests: progress report of Working Group VI.
7. Electronic commerce: progress report of Working Group IV.
8. Transport law: progress report of Working Group III.
9. Privately financed infrastructure projects: progress report of Working Group I.
10. Monitoring implementation of the 1958 New York Convention.
11. Enlargement of membership of the Commission.
12. Case law on UNCITRAL texts (CLOUT).
13. Digest of case law on United Nations Sales Convention.
14. Training and technical assistance.
15. Status and promotion of UNCITRAL legal texts.
16. General Assembly resolutions on the work of the Commission.
17. Coordination and cooperation.
18. Other business.
19. Date and place of future meetings.
20. Adoption of the report of the Commission.

E. Establishment of a Committee of the Whole

11. The Commission established itself as a Committee of the Whole for the consideration of agenda item 4. The Commission elected José María Abascal Zamora (Mexico) Chairman of the Committee of the Whole. The Committee of the Whole met from 17 to 25 June 2002.

F. Adoption of the report

12. At its 752nd meeting, on 25 June 2002, and at its 756th and 757th meetings, on 28 June 2002, the Commission adopted the present report by consensus.

III. Draft UNCITRAL Model Law on International Commercial Conciliation

A. General remarks

13. The Commission exchanged views on the usefulness of the draft UNCITRAL Model Law in International Commercial Conciliation (hereinafter referred to as the "Model Law" or "draft Model Law") and its potential to promote the use of conciliation both internationally and domestically and to strengthen the enforcement of settlement agreements. It was observed with approval that the draft Model Law avoided

over-regulation of conciliation proceedings and gave a high priority to party autonomy.

B. Title

14. The Commission adopted the draft title without comment.

C. Consideration of draft articles

Article 1. Scope of application and definitions

15. Draft article 1 as considered by the Commission was as follows:

> "(1) This Law applies to international[1] commercial[2] conciliation.
>
> "(2) For the purposes of this Law, "conciliation" means a process, whether referred to by the expression conciliation, mediation or an expression of similar import, whereby parties request a third person, or a panel of persons, to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The conciliator or the panel of conciliators does not have the authority to impose upon the parties a solution to the dispute.
>
> "(3) A conciliation is international if:
>
> "(a) The parties to an agreement to conciliate have, at the time of the conclusion of that agreement, their places of business in different States; or
>
> "(b) The State in which the parties have their places of business is different from either:
>
> "(i) The State in which a substantial part of the obligations of the commercial relationship is to be performed; or
>
> "(ii) The State with which the subject matter of the dispute is most closely connected.
>
> "(4) For the purposes of this article:
>
> "(a) If a party has more than one place of business, the place of business is that which has the closest relationship to the agreement to conciliate;
>
> "(b) If a party does not have a place of business, reference is to be made to the party's habitual residence.
>
> "(5) This Law also applies to a commercial conciliation when the parties agree that the conciliation is international or agree to the applicability of this Law.
>
> "(6) The parties are free to agree to exclude the applicability of this Law.
>
> "(7) Subject to the provisions of paragraph (8) of this article, this Law applies irrespective of the basis upon which the conciliation is carried out, including agreement between the parties whether reached before or after a dispute has arisen, an obligation established by law, or a direction or suggestion of a court, arbitral tribunal or competent governmental entity.
>
> "(8) This Law does not apply to:
>
> "(a) Cases where a judge or an arbitrator, in the course of a court or arbitral proceeding, attempts to facilitate a settlement; and
>
> "(b) [...]."

Paragraph (1)

16. A drafting suggestion was that the title of article 1 should be "Definitions and scope of application".

17. Some concern was expressed as to the application of the Model Law in the context of the rules of private

---

[1] States wishing to enact this Model Law to apply to domestic as well as international conciliation may wish to consider the following changes to the text: [...]

[2] The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

international law, and it was suggested that that issue needed to be carefully addressed in the Guide to Enactment and Use of the Model Law (hereinafter referred to as "the Guide" or "the draft Guide", to avoid the Model Law being misinterpreted as interfering with existing conflict-of-laws rules. A related concern was the need to encourage States to adopt the Model Law with as few changes as possible to ensure uniformity of adoption, a result which would overcome the potential for conflict-of-laws issues to arise.

18. A further concern expressed related to the application of the Model Law to both national and international commercial conciliation and the desirability of having different regimes apply was questioned. It was recalled that different views were discussed in the Working Group and footnote 1 reflected the agreement on how that issue should be approached to take account of the different views. The Commission agreed to postpone its discussion of the content of footnote 1 until it had had the opportunity to consider a proposal on the amendments that would be required.

19. The Commission adopted paragraph (1) as drafted, pending discussion of the content of the footnote.

Paragraph (2)

20. It was suggested that the Guide should indicate that when interpreting article 1(2) it would be relevant to take into consideration the conduct of the parties that demonstrated their understanding that they were engaged in conciliation.

21. Paragraph (2) was adopted as drafted.

Paragraph (3)

22. A suggestion was made that the order of paragraphs (3)(b)(i) and (ii) should be reversed on the basis that paragraph (3)(b)(ii) stated the general principle and paragraph (3)(b)(i) was a specific example of that general principle. A contrary view was that since paragraph (3)(b)(i) indicated the most direct means of determining internationality, and paragraph (3)(b)(ii) raised more complex issues of conflicts of laws, the existing order should be maintained. In support of that view, it was observed that the current text reflected the discussion in the Working Group and was consistent with the approach taken in the UNCITRAL Model Law on International Commercial Arbitration. The Commission adopted paragraph (3) as drafted.

Paragraphs (4) and (5)

23. Paragraphs (4) and (5) were adopted by the Commission without comment.

Paragraph (6)

24. One suggestion expressed was that the parties should be able to agree to apply the Model Law in whole or in part and that paragraph (6) should be amended to that end. In reply, it was pointed out that paragraph (6) was concerned with the question of whether or not the Model Law would apply and that article 3 then dealt with the issue of, where the Model Law was to apply, whether it would apply in whole or in part. After discussion, the Commission adopted paragraph (6) as drafted.

Paragraph (7)

25. Paragraph (7) was adopted by the Commission without comment.

Paragraph (8)

26. In support of adopting paragraph (8) as drafted, it was observed that the paragraph would neither encourage or discourage the practice of a judge or arbitrator facilitating a settlement in the course of court or arbitration proceedings; the practices in that regard differed in the various legal systems and it was considered prudent not to interfere with the rules of procedure governing the conduct of the judge or arbitrator and provide that the Model Law would not apply in those situations. It was observed that, in some cases of so-called "court-annexed conciliation", it might not be clear whether such conciliation was carried out "in the course of a court [...] proceeding". For such cases, it was suggested that the Guide should draw the attention of enacting States to the need to clarify in the piece of legislation enacting the Model Law whether such conciliation should be governed by that piece of legislation or not. It was pointed out, however, that the Model Law could apply to the situations referred to in paragraph (8) if the parties agreed under paragraph (5) that it should apply and that that issue should be addressed in the Guide. It was

noted that paragraph (8)(b) was provided to enable countries to indicate other situations where the Model Law might not apply and that examples would be given in the Guide. After discussion, paragraph (8) was adopted by the Commission without change.

27. The Commission referred draft article 1 to the drafting group.

Article 2. Interpretation

28. Draft article 2 as considered by the Commission was as follows:

> "(1) In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.
>
> "(2) Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based."

29. Draft article 2 was adopted as drafted.

Article 3. Variation by agreement

30. Draft article 3 as considered by the Commission was as follows:

> "Except for the provisions of article 2 and article 7, paragraph (3), the parties may agree to exclude or vary any of the provisions of this Law."

31. A proposal was made that article 15 should also be referred to in article 3. A contrary view was that article 3 should be left as it was in order to preserve maximum party autonomy. A separate but related observation was that, while parties could not agree to a higher standard of enforceability than that reflected in article 15, they should be free to agree to a lesser standard. While the Commission approved that view, it was agreed that those issues should be further considered in the context of the discussion of article 15. It was also suggested that article 3 might need further consideration when the discussion of all articles of the Model Law had been completed. The Commission adopted draft article 3, subject to further consideration when the discussion of other articles had been completed.

Article 4. Commencement of conciliation proceedings

32. Draft article 4 as considered by the Commission was as follows:

> "Article 4. Commencement of conciliation proceedings[3]
>
> "(1) Unless otherwise agreed by the parties, the conciliation proceedings in respect of a particular dispute that has arisen commence on the day on which the parties to the dispute agree to engage in conciliation proceedings.
>
> "(2) If a party that invited another party to conciliate does not receive an acceptance of the invitation within thirty days from the day on which the invitation was sent, or within such other period of time as specified in the invitation, the party may elect to treat this as a rejection of the invitation to conciliate."

Footnote

33. Various views were expressed as to the substance and placement of draft article X contained in the footnote to draft article 4. In favour of maintaining a provision along the lines of draft article 4 in the text of the Model Law, it was stated that, in the absence of such a provision, some legal systems would treat the commencement of conciliation proceedings as interrupting the limitation period, which, at the end of an unsuccessful attempt at conciliation, would have to start running again from day one. To avoid that result, a specific provision was needed to establish that the commencement of conciliation proceedings would result only in a suspension of the limitation period. The contrary view was that, before adopting a provision along the lines of draft article X, States should be

---

[3] "The following text is suggested for States that might wish to adopt a provision on the suspension of the limitation period:

"Article X. Suspension of limitation period

"(1) When the conciliation proceedings commence, the running of the limitation period regarding the claim that is the subject matter of the conciliation is suspended.

"(2) Where the conciliation proceedings have terminated without a settlement, the limitation period resumes running from the time the conciliation ended without a settlement."

warned against the risks inherent in such a provision. It was stated that establishing as a rule that the commencement of conciliation proceedings should result in suspension of the limitation period would require a high degree of precision as to what constituted such commencement. Requiring such a degree of precision might disregard the fundamentally informal and flexible nature of conciliation. It was pointed out that the acceptability of the Model Law might be jeopardized if it were to interfere with existing procedural rules regarding the suspension or interruption of limitation periods. Furthermore, the good reputation of conciliation as a dispute settlement technique might suffer if expectations regarding its procedural implications were created and could not easily be fulfilled, due to the circumstances under which conciliation generally took place. It was also stated that States considering adoption of article X should be informed of the possibilities for parties to preserve their rights when article X had not been adopted, namely that a party could commence a national court proceeding or arbitration to protect its interests. It was suggested that the text of draft article X should not appear as a footnote to article 4 but should be dealt with exclusively in the Guide, with appropriate explanations being given as to the various arguments that had been exchanged regarding that provision during the preparation of the Model Law.

34. After discussion, the Commission adopted the footnote to draft article 4 without change. It was agreed that the Guide should reflect the opposing views that had been expressed regarding the suitability of enacting article X.

Paragraph (1)

35. The view was expressed that paragraph (1) did not distinguish clearly enough between the time when the parties agreed to conciliate (which might occur long before any dispute arose) and the time when the parties decided to engage in conciliation in the context of a specific dispute. In response, it was generally agreed that a provision dealing with the commencement of conciliation proceedings was clearly not geared to the stage where an agreement was made in principle to resort to conciliation but to the time when parties engaged in conciliation in respect of a particular dispute. However, it was also agreed that the text might be improved to avoid any misunderstanding, for example by adding the words "in respect of that dispute" at the end of paragraph (1). The matter was referred to the drafting group.

Paragraph (2)

36. A concern was expressed that paragraph (2) might not provide a satisfactory solution where, prior to any dispute having arisen, parties had concluded a general agreement to conciliate in respect of future disputes. It was stated that, in such a case, where a dispute arose and a party no longer wished to conciliate, paragraph (2) offered that party an opportunity to disregard its contractual obligation simply by not responding to the invitation to conciliate within thirty days. It was stated in response that the Model Law was based on the policy that no attempt should be made to force any party to conciliate. It was observed that, consistent with that policy, draft article 12 allowed any party to conciliation proceedings to terminate those proceedings unilaterally. The purpose of paragraph (2) was not to allow disregard of any contractual commitment to conciliate but rather to provide certainty in a situation where it was unclear whether the party was willing to conciliate (by determining the time when an attempt at conciliation was deemed to have failed), irrespective of whether that failure was or was not a violation of an agreement to conciliate. It was thus agreed that the Model Law should not deal with the consequences of failure by a party to comply with an agreement to conciliate. That matter was to be dealt with under the general law of obligations applicable in the circumstances.

37. While the Commission adopted the substance of paragraph (2) without change, the drafting group was invited to consider the possibility of expressing more clearly the above-mentioned policy in the context of paragraph (2) and it was agreed that further clarification would be included in the Guide.

Article 5. Number of conciliators

38. Draft article 5 as considered by the Commission was as follows:

> "There shall be one conciliator, unless the parties agree that there shall be a panel of conciliators."

39. The Commission adopted the substance of draft article 5 without change and referred it to the drafting group.

Article 6. Appointment of conciliators

40. Draft article 6 as considered by the Commission was as follows:

> "(1) In conciliation proceedings with one conciliator, the parties shall endeavour to reach agreement on the name of the sole conciliator.
>
> "(2) In conciliation proceedings with two conciliators, each party appoints one conciliator.
>
> "(3) In conciliation proceedings consisting of three or more conciliators, each party appoints one conciliator and shall endeavour to reach agreement on the name of the other conciliators.
>
> "(4) Parties may seek the assistance of an appropriate institution or person in connection with the appointment of conciliators. In particular:
>
> "(a) A party may request such an institution or person to recommend names of suitable persons to act as conciliator; or
>
> "(b) The parties may agree that the appointment of one or more conciliators be made directly by such an institution or person.
>
> "(5) In recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.
>
> "(6) When a person is approached in connection with his or her possible appointment as a conciliator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. A conciliator, from the time of his or her appointment and throughout the conciliation proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him or her."

Paragraphs (1) to (3)

41. A concern was expressed as to how paragraphs (1) to (3) on appointment of conciliators would apply in the case of multiparty conciliations. It was observed that, while paragraph (2) expressed a general principle that, where there were two parties, each party could appoint a conciliator, that principle might not be appropriate for extension to cases where there were a large number of parties. In response, it was suggested that article 6 should adopt a more neutral formulation which focused on the autonomy of the parties to appoint conciliators; a choice of conciliators could not be imposed upon the parties and, if they could not agree as to who should be appointed, it would not be possible for the conciliation to take place. That neutral solution could be achieved by addressing the need for parties to reach agreement on the identity and number of conciliators to be appointed, or on a procedure by which those appointments could be made. To reflect those considerations, two possible variants were proposed as follows:

Variant 1:

> "(1) In conciliation proceedings with one conciliator, the parties shall endeavour to reach agreement on the name of the sole conciliator.
>
> "(2) In conciliation proceedings with two or more conciliators, the parties shall endeavour to reach agreement on either a joint appointment of the conciliators or on [the procedure for the appointment of the conciliators] [the way in which the parties will appoint the conciliators]."

Variant 2:

> "(1) The parties shall endeavour to reach agreement on either a joint appointment of the conciliator or conciliators or on [the procedure for the appointment of the conciliator or conciliators] [the way in which the parties will appoint the conciliator or conciliators]."

42. It was noted that variant 1 retained paragraph (1) of the draft text where a sole conciliator was to be appointed and reformulated paragraph (2) to indicate the need, in a situation where two or more conciliators were to be appointed, for the parties to agree on either a joint appointment of conciliators or on a procedure for appointment. It was noted that variant 2 stated, as a general principle applicable to all proceedings without reference to the number of conciliators to be appointed, the need for the parties to agree on either a joint appointment of conciliators or on a procedure for appointment.

43. Wide support was expressed in favour of variant 1 on the basis that it offered a more structured approach to the issue of appointment and retained the reference to the possibility of appointing two conciliators, an important distinction between conciliation and arbitration; in arbitration the need for an odd number of arbitrators was generally emphasized. At the same time, variant 1 was felt to be sufficiently flexible to address situations where more than two conciliators were to be appointed, including in multiparty conciliations. The observation was made, however, that both variants removed the concept of each party appointing a conciliator, previously reflected in paragraph (2) of draft article 6 and that that notion should be reflected in the Guide as one of the possibilities to be covered by paragraph (2) of variant 2. A different suggestion was that that idea should somehow be incorporated in the text of variant 2. A further suggestion was that the concept reflected in paragraph (3) of draft article 6, that of the appointment of three conciliators, should also be included in the Guide. A related proposal was that paragraph (2) of variant 1 could be divided into two sentences. The first sentence would address the need for parties to agree on the appointment of conciliators. The second sentence would address the possibility of parties also reaching agreement on a procedure for appointment of conciliators; that approach was intended to cover the possibility included in paragraph (3) of draft article 6 of parties each appointing one conciliator and then agreeing upon the means of appointing a third conciliator. That proposal also received some support.

44. It was proposed that the reference to a "joint" appointment should be deleted on the basis that a joint appointment was only one possible means of parties making an appointment and that the emphasis should be placed more broadly upon the need for agreement as to the appointment. That proposal was widely supported.

45. General support was expressed in favour of retaining the first alternative text in square brackets, that is "the procedure for the appointment of the conciliators".

46. As a matter of drafting, it was suggested that the language of paragraph (1) of variant 1, which referred to the "agreement on the name of the sole conciliator" should be aligned with paragraph (2) of variant 1, which referred to agreement on appointment of conciliators or the procedure for appointment.

47. After discussion, the Commission agreed to adopt variant 1, with the deletion of the word "joint", the retention of the first alternative text in square brackets, and the alignment of the language of paragraphs (1) and (2). (For continuation of the discussion, see para. 53.)

Paragraph (4)

48. The Commission adopted the substance of paragraph (4) without change.

Paragraph (5)

49. It was observed that, in view of the adoption of variant 1 as proposed, the words in paragraph (5) "with respect to a sole or third conciliator" might need to be amended. The Commission adopted the substance of paragraph (5).

Paragraph (6)

50. It was proposed and the Commission agreed that the Guide should make it clear that a failure to disclose facts which might give rise to justifiable doubts within the meaning of paragraph (6) should not create a ground for setting aside a settlement agreement that would be additional to the grounds already available under applicable contract law. It was noted that those grounds were not unified and that that was a matter for each jurisdiction to address under its own law. It was noted that that issue of nullification of the settlement agreement was not related to the question of whether a conciliator who failed to disclose such facts, whether intentionally or inadvertently, would be subject to sanctions for that failure.

51. As a matter of drafting, it was suggested that the words "of which he or she is aware" should be added to qualify the circumstances to be disclosed. In response, it was observed that a conciliator could not be required to disclose circumstances of which he or she was not aware and the additional words were not required. The Commission did not adopt the suggested text.

52. The Commission referred the substance of article 6 as adopted to the drafting group.

53. Following the discussion of draft articles 5 and 6, the Commission agreed to a suggestion to combine those draft articles in a draft article to be numbered article 5. The Commission referred to the drafting group the task of preparing that combined draft article and in so doing to reflect the discussion set forth above under articles 5 and 6.

Article 7. Conduct of conciliation

54. Draft article 7 as considered by the Commission was as follows:

> "(1) The parties are free to agree, by reference to a set of rules or otherwise, on the manner in which the conciliation is to be conducted.
>
> "(2) Failing agreement on the manner in which the conciliation is to be conducted, the conciliator or the panel of conciliators may conduct the conciliation proceedings in such a manner as the conciliator or the panel of conciliators considers appropriate, taking into account the circumstances of the case, any wishes that the parties may express and the need for a speedy settlement of the dispute.
>
> "(3) In any case, in conducting the proceedings, the conciliator or the panel of conciliators shall seek to maintain fair treatment of the parties and, in so doing, shall take into account the circumstances of the case.
>
> "(4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute."

Paragraphs (1) and (2)

55. The Commission adopted the substance of paragraphs (1) and (2) without change.

Paragraph (3)

56. A concern was expressed that, as currently drafted, paragraph (3) might easily be misinterpreted as creating new grounds for setting aside a conciliation settlement. Such misunderstanding might arise if paragraph (3) was construed as applying not only to the conduct of the conciliation proceedings but also to the result of such proceedings, i.e., the settlement agreement. It was suggested that paragraph (3) should be deleted or, as an alternative to the deletion of the entire paragraph, that it should be made non-mandatory under article 3, redrafted through a deletion of the words "in any case", and complemented by appropriate explanations in the Guide to clarify that paragraph (3) was not intended to create a cause of action to challenge the settlement agreement.

57. The widely prevailing view, however, was that paragraph (3) should be regarded as a basic obligation and a minimum standard to be observed mandatorily by any conciliator.

58. After discussion, the Commission adopted the substance of paragraph (3) without change. It was agreed that the Guide should make it clear that paragraph (3) was intended to govern the conduct of the conciliation proceedings and that it did not address the contents of the settlement agreement.

Paragraph (4)

59. The Commission adopted the substance of paragraph (4). As a matter of drafting, it was observed that the text of paragraph (4) should be brought in line with paragraphs (2) and (3) by referring not only to "the conciliator" but also to "the panel of conciliators".

60. The Commission referred the substance of article 7 as adopted to the drafting group.

Article 8. Communication between conciliator and parties

61. Draft article 8 as considered by the Commission was as follows:

> "Unless otherwise agreed by the parties, the conciliator, the panel of conciliators or a member of the panel may meet or communicate with the parties together or with each of them separately."

62. The discussion focused on the opening words of the draft article ("Unless otherwise agreed by the parties"). The view was expressed that, in view of the general reference to party autonomy contained in article 3, the opening words were superfluous and should be deleted from both draft article 8 and other provisions where they appeared in the draft Model Law. The prevailing view was that, while the general terms of article 3 made it unnecessary to refer to party autonomy in every provision that could be varied

through contract, references to contractual derogations in the draft Model Law would need to be reviewed on a case-by-case basis. With respect to draft article 8, it was decided that the opening words should be omitted as superfluous.

63. The Commission referred the substance of article 8 as adopted to the drafting group.

Article 9. Disclosure of information between the parties

64. Draft article 9 as considered by the Commission was as follows:

> "When the conciliator, the panel of conciliators or a member of the panel receives information concerning the dispute from a party, the conciliator, the panel of conciliators or a member of the panel may disclose the substance of that information to the other party. However, when a party gives any information to the conciliator, the panel of conciliators or a member of the panel subject to a specific condition that it be kept confidential, that information shall not be disclosed to the other party."

Title

65. It was observed that the title of the draft article inadequately reflected the scope of the provision, which did not cover direct exchanges of information between the parties but rather information disclosed to the conciliator by a party (and possibly by the conciliator to another party). It was agreed that, in line with article 10 of the UNCITRAL Conciliation Rules, the title should read "Disclosure of information".

Reference to "information concerning the dispute"

66. The view was expressed that the reference to "information concerning the dispute" was too restrictive. It was stated that the conciliator, in the conduct of the conciliation proceedings, might find it useful to communicate to the other party information received from another party that might be conducive to a settlement, although it did not directly concern the dispute. Information regarding the practices of a party as to pricing was given as an example. It was thus suggested that the words "concerning the dispute" should be deleted. The Commission did not follow that suggestion.

Reference to "may disclose"

67. A question was raised as to whether it was appropriate to provide that the conciliator "may disclose" to a party the substance of the information received from another party. In particular, doubts were expressed as to whether such a discretionary power granted to the conciliator might disregard the duty to treat the parties with equality. In response, it was explained that the purpose of draft article 9 was to establish a discretionary power allowing the conciliator to proceed in the manner that was most likely to conduce to a solution of the dispute.

68. Certain countries expressed concern with respect to the policy on which draft article 9 was based, which was described as a long outdated approach. It was stated that, in the absence of agreement to the contrary, requiring the conciliator to maintain strict confidentiality of the information communicated by a party was the only way of ensuring frankness and openness of communications in the conciliation process. Such confidentiality was reported to be consistent with conciliation practice in certain countries (A/CN.9/487, para. 131). It was proposed that draft article 9 should be amended to read as follows: "When the conciliator, the panel of conciliators or a member of the panel of conciliators receives information concerning the dispute from a party, the conciliator or the panel of conciliators shall not disclose that information to any other party unless the party giving the information expressly consents to such disclosure" (see A/CN.9/506, para. 78).

69. In response, the Commission reiterated the preference expressed by the Working Group for the view that had prevailed widely at its thirty-fourth and thirty-fifth sessions, according to which draft article 9 should ensure circulation of information between the various participants in the conciliation process. It was pointed out that requiring consent by the party who gave the information before any communication of that information to the other party by the conciliator was not the practice in some countries, and that was reflected in article 10 of the UNCITRAL Conciliation Rules (A/CN.9/487, para. 132 and A/CN.9/506, para. 79), but was the practice in some other countries.

70. However, in order to take into account what might be regarded as a natural and legitimate expectation by the parties that information

communicated to conciliators would be treated as confidential, it was widely agreed that the Guide should contain a recommendation to conciliators that they should inform the parties that information communicated to a conciliator might be revealed unless the conciliator was instructed otherwise (see para. 161, below).

Reference to "the substance of that information"

71. As a matter of drafting, it was suggested that the words "the substance of that information" should be replaced by the words "that information". It was pointed out in response that the current text, along the lines of article 10 of the UNCITRAL Conciliation Rules, was preferable to avoid burdening the conciliator with an obligation to communicate the literal content of any information received from the parties (A/CN.9/506, para. 81). The suggestion was not followed by the Commission.

Reference to "the other party"

72. As a matter of drafting, it was pointed out that the words "to the other party" in both the first and the second sentence of draft article 9 did not accommodate the needs of multiparty conciliation. In order to cover unambiguously the case where the proceedings involved more than one party, it was suggested that the words "to the other party" should be replaced by the words "to any other party". The Commission took note of the suggestion with approval.

73. After discussion, the Commission referred the substance of article 9 as adopted to the drafting group.

Article 10. Duty of confidentiality

74. Draft article 10 as considered by the Commission was as follows:

> "Unless otherwise agreed by the parties, all information relating to the conciliation proceedings shall be kept confidential, except where disclosure is required under the law or for the purposes of implementation or enforcement of a settlement agreement."

75. A concern was expressed that, because of the broad definition of conciliation in article 1 of the draft Model Law, article 10 as drafted might apply to establish liability where a person other than a professional conciliator was asked to facilitate the settlement of a dispute in informal circumstances where neither the parties involved nor the person asked to facilitate would have any knowledge of the application of the Model Law or expectations as to their involvement in an international commercial conciliation. Although part of the solution to that issue might lie in the sanctions applicable under national law for breach of a duty of confidentiality, the concern was to protect inadvertent parties and third persons, rather than professional conciliators who were well aware of issues relating to confidentiality. It was observed that that problem had been identified in some countries and addressed by way of a narrower definition of conciliation that would restrict the instances in which such a duty could arise. However, given the Commission's adoption of a broad definition in the draft Model Law, it was proposed that draft article 10 should apply only "whenever agreed by the parties". A contrary view was that what was required in the draft Model Law was a rule on confidentiality that would reflect the general expectation of parties participating in conciliation that the proceedings would be confidential, without the need for them to explicitly address that issue in their conciliation agreement; the result of such a proposal for amendment would be that if the parties did not address the issue there would be no obligation to observe confidentiality. A related view was that the duty of confidentiality should apply broadly and be subject only to the limitations included in the draft article.

76. Another proposal to address the concerns raised was that the words "duty of" be deleted from the title, and that an explanation along the following lines be included in the Guide:

> "It is the intent of the drafters that, in the event a court or other tribunal is considering an allegation that a person did not comply with article 10, it should include in its consideration any evidence of conduct of the parties that shows whether they had, or did not have, an understanding that a conciliation existed and consequently an expectation of confidentiality. A State that enacts the Model Law may wish to clarify article 10 to reflect this interpretation."

77. General support was expressed in favour of that approach. It was suggested, however, that the second sentence of the explanation implied that the draft article did not in fact achieve its stated purpose and it

was proposed that that sentence be deleted. Support was expressed in favour of retaining the idea expressed in the sentence because of the need for such a clarification in some States, but, acknowledging that that implication could be made, it was suggested that the sentence be amended to read: "When enacting the Model Law, certain States may wish to clarify article 10 to reflect that interpretation". That proposal was supported. As a further amendment to the title of article 10, it was proposed that the words "of conciliation" be added.

78. The view was expressed that the explanation to be included in the Guide for draft article 10 might also be relevant to other articles, such as draft article 11, to assist in determining the general question of whether or not a conciliation was being conducted. In support of that view, it was observed that further explanation was required in the Guide in respect of article 1 to clarify the circumstances in which a conciliation could be deemed to exist.

79. Some concern was expressed as to who would be required to observe the obligation of confidentiality and whether the article as drafted would cover the parties, the conciliator and third persons, including those charged with administering a conciliation. In response, it was observed that draft article 10 was broader than draft article 9 and applied broadly to "all information relating to the conciliation proceedings", regardless of who might be in possession of that information.

80. Some support was expressed in favour of deleting the words "unless otherwise agreed", since they were superfluous given the presence of article 3. After discussion, however, the prevailing view was that they should remain in order to reinforce in that context the principle of party autonomy.

81. The Commission adopted the substance of article 10 and referred it to the drafting group.

Article 11. Admissibility of evidence in other proceedings

82. Draft article 11 as considered by the Commission was as follows:

> "(1) Unless otherwise agreed by the parties, a party that participated in the conciliation proceedings or a third person, including a conciliator, shall not in arbitral, judicial or similar proceedings rely on, introduce as evidence or give testimony or evidence regarding, any of the following:
>
> "(a) An invitation by a party to engage in conciliation proceedings or the fact that a party was willing to participate in conciliation proceedings;
>
> "(b) Views expressed or suggestions made by a party to the conciliation in respect of a possible settlement of the dispute;
>
> "(c) Statements or admissions made by a party in the course of the conciliation proceedings;
>
> "(d) Proposals made by the conciliator;
>
> "(e) The fact that a party to the conciliation had indicated its willingness to accept a proposal for settlement made by the conciliator;
>
> "(f) A document prepared solely for purposes of the conciliation proceedings.
>
> "(2) Paragraph (1) of this article applies irrespective of the form of the information or evidence referred to therein.
>
> "(3) The disclosure of the information referred to in paragraph (1) of this article shall not be ordered by an arbitral tribunal, court or other competent governmental authority and, if such information is offered as evidence in contravention of paragraph (1) of this article, that evidence shall be treated as inadmissible. Nevertheless, such information may be disclosed or admitted in evidence to the extent required under the law or for the purposes of implementation or enforcement of a settlement agreement.
>
> "(4) The provisions of paragraphs (1), (2) and (3) of this article apply whether or not the arbitral, judicial or similar proceedings relate to the dispute that is or was the subject matter of the conciliation proceedings.
>
> "(5) Subject to the limitations of paragraph (1) of this article, evidence that is otherwise admissible in arbitral or court proceedings does not become inadmissible as a consequence of having been used in a conciliation."

Paragraph (1)

83. It was noted in respect of the phrase "or a third person" that paragraph 61 of the draft Guide indicated that those words were used to clarify that persons other than the party (for example, witnesses or experts) who participated in the conciliation proceedings were to be covered by paragraph (1). To better reflect that coverage, it was proposed that the words "or third persons" should be moved so that the paragraph would read: "Unless otherwise agreed by the parties, a party or third person that participated …". A further proposal was that the words "including a conciliator" should also be moved to the same position. In response to those suggestions, a concern was raised that that drafting would not cover third persons, including personnel who worked in a conciliation institution, who might obtain information of the type referred to in article 11, but who did not themselves participate directly in the proceedings. Support was expressed in favour of including such persons within the scope of paragraph (1), even though it was acknowledged that in some cases the information provided by such a third person might not, under applicable law, be admissible in arbitral, judicial or similar proceedings.

84. After discussion, the Commission agreed that paragraph (1) should cover parties to the conciliation, conciliators and third persons whether or not they participated in the proceedings including those from a conciliation institution charged with administering the proceedings.

85. As a matter of drafting, it was suggested that subparagraph (b) should read "made by a party in the conciliation" rather than "to the conciliation".

86. The Commission adopted the substance of paragraph (1).

Paragraph (2)

87. The Commission adopted the substance of paragraph (2) without comment.

Paragraph (3)

88. A concern was raised as to the meaning of the reference to "the law" in the second sentence of paragraph (3) and whether it was intended to cover both court decisions and legislation, with a preference being expressed that it be limited to legislation. It was observed in response that that matter was one of interpretation and might be addressed in the Guide.

89. The Commission adopted the substance of paragraph (3) without change.

Paragraphs (4) and (5)

90. The Commission adopted the substance of paragraphs (4) and (5) without comment.

91. The Commission referred article 11 as adopted to the drafting group.

Article 12. Termination of conciliation

92. Draft article 12 as considered by the Commission was as follows:

> "The conciliation proceedings are terminated:
>
> "(a) By the conclusion of a settlement agreement by the parties, on the date of the agreement;
>
> "(b) By a written declaration of the conciliator or the panel of conciliators, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration;
>
> "(c) By a written declaration of the parties addressed to the conciliator or the panel of conciliators to the effect that the conciliation proceedings are terminated, on the date of the declaration; or
>
> "(d) By a written declaration of a party to the other party and the conciliator or the panel of conciliators, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration."

93. A concern was raised as to how cases where the parties agreed orally to end their conciliation or by their conduct indicated that they would not proceed with conciliation should be treated given the terms of article 12. In response to that concern, and noting that other articles of the draft Model Law did not contain requirements for writing, and that conciliation could be an informal procedure, it was proposed that the requirement for a "written" declaration in subparagraphs (b) to (d) should be deleted. A different view was that the requirement for the declaration to be in

writing should be maintained as it related to other articles, such as article X in the *footnote to article 4* and articles 10 and 11, and the need for certainty as to when conciliation proceedings had terminated. It was also pointed out in that regard that there was also a need for certainty as to when conciliation proceedings had commenced, which was addressed in article 4. It was observed that subparagraphs (b) to (d) dealt with failure of the conciliation, where the dispute remained on foot and parties would likely have recourse to arbitration or judicial proceedings for its resolution. In those cases, the courts and arbitral tribunals had to be certain that the conciliation proceedings had terminated and that the parties were entitled to commence those subsequent proceedings. The absence of a written declaration was likely to create uncertainty as to that issue. The particular importance of a written declaration to subparagraph (d), which involved a unilateral declaration, was emphasized. After discussion, the Commission decided that the arguments relating to informality prevailed and that the requirement for the declaration in subparagraphs (b) to (d) to be in writing should be deleted.

94. On a related matter, it was suggested that that proposal to delete the requirement for writing did not cover cases of abandonment of the conciliation procedure after it had commenced where this could only be judged by the conduct of the parties. Proposals to address that concern included adding a further paragraph to the article, or adding words to the effect of "after a reasonable attempt to consult" or "after inviting the parties to consult" as a substitute for "after consultation" in subparagraph (b). Those different proposals received some support. A different view was that subparagraph (b) would cover those cases because the phrase "after consultation with the parties" should be interpreted to include those cases where the conciliator had contacted the parties in an attempt to consult and received no response. That suggestion was generally supported and it was proposed that that interpretation should be confirmed in the Guide.

95. A different concern related to those cases where the parties had a prior contractual agreement to conciliate and it was suggested that as a minimum, to satisfy requirements of good faith, parties should be required or encouraged to engage in conciliation for some reasonable period. To reflect that concern it was proposed that the words "after reasonable delay" or "after a reasonable time frame" be added to subparagraph (d). That proposal did not receive support on the basis that agreements to conciliate varied widely, expressing different degrees of commitment to conciliate, and that it would be inappropriate to impose a single obligatory rule in all cases. It was also pointed out that the success of conciliation depended on both parties being willing participants and that it made no sense to force an unwilling party to conciliate. It was pointed out that the comment would imply no consequences with respect to any party's failure to comply with a contractual obligation to participate in a conciliation. It was also pointed out that the consequences of a failure to comply with a prior agreement to conciliate depended upon the applicable contract law and were not sought to be resolved in the Model Law.

96. It was suggested that while the word "written" should be deleted as a general matter, a State adopting article X might wish to require that termination be in writing since precision was required in determining when the conciliation ended so that the courts could properly determine the prescription period. In that context, it was noted that if a written declaration was required for termination, it might also be required for commencement of the conciliation. It was requested that that be reflected in the Guide.

97. As a matter of drafting, it was suggested that the heading of article 12 should refer to "conciliation proceedings" rather than simply to "conciliation".

98. The Commission referred the substance of article 12 as adopted to the drafting group.

Article 13. Conciliator acting as arbitrator

99. Draft article 13 as considered by the Commission was as follows:

> "Unless otherwise agreed by the parties, the conciliator shall not act as an arbitrator in respect of a dispute that was or is the subject of the conciliation proceedings or in respect of another dispute that has arisen from the same contract or any related contract."

100. Recalling its earlier discussion of the proviso "unless otherwise agreed" (see para. 80, above), the Commission considered the question whether that proviso should be retained in draft article 13. Differing views were expressed. One view was that the proviso stated the obvious and should, therefore, be deleted as

superfluous. In support of that view, it was stated that the proviso could even be counterproductive, because it could give the wrong impression that there were two different degrees of party autonomy, a higher and a lesser one. However, the prevailing view was that the proviso was useful and should be retained. It was stated that, like arbitration, conciliation was subject to party autonomy and, therefore, the agreement of the parties should be respected. In addition, it was observed that, even if the proviso stated the obvious, the issue was so important to a number of countries that the proviso could serve as a useful reminder to the parties so that they would not need to refer to draft article 3 which, in any case, would not address it directly. On the understanding that an explanation of the reasons for retaining the proviso would be included in the Guide, the Commission decided to retain it.

101. The concern was expressed that, to the extent draft article 13 did not address the question of whether a conciliator might act as a representative, counsel or witness, it might be incomplete and inconsistent with article 19 of the UNCITRAL Conciliation Rules. In order to address that concern, it was suggested that draft article 13 should be aligned with article 19 of the UNCITRAL Conciliation Rules. That suggestion was objected to. It was recalled that, in view of the differing approaches taken in the various legal systems with respect to that question, the Working Group had decided not to address it in the Model Law and to refer to the various practices in the Guide (see A/CN.9/506, paras. 117-118).

102. In response to a question, it was explained that "another dispute" referred to in the draft article could involve parties other than the parties in the conciliation proceedings. The Commission affirmed that understanding and decided that it should be included in the Guide.

103. The concern was expressed that, in referring only to contracts, draft article 13 might be narrower in scope than draft article 1, paragraph (2), which referred to contractual or other legal relationships. In order to address that concern, several suggestions were made. One suggestion was to revise the last words of draft article 13 along the following lines: "same or related contract or legal relationship". Another suggestion was to refer to "the same or a related legal relationship". Another suggestion was to refer to "closely related disputes". Yet another suggestion was to refer to "the same factual situation". There was sufficient support in the Commission for expanding draft article 13 to refer to contractual or other legal relationships in line with draft article 1, paragraph (2).

104. It was suggested that the title of the article should be amended to indicate a greater consistency and correlation with its content, which referred expressly to an inability of the conciliator to act as an arbitrator. In that respect it was suggested to entitle the article "Inability of the conciliator to act as arbitrator". That proposal was not adopted.

105. Subject to the change referred to above (see para. 103), the Commission adopted draft article 13 and referred it to the drafting group.

Arbitrator acting as a conciliator

106. The Commission considered a suggestion to reinstate in a footnote to draft article 13 a provision which read as follows (see A/CN.9/506, para. 130):

> "[It is not incompatible with the function of an arbitrator if the arbitrator raises the question of a possible conciliation and, to the extent agreed to by the parties, participates in efforts to reach an agreed settlement.]"

107. In support of that suggestion, it was stated that the laws of a number of countries expressly provided for that practice. The Model Law should not ignore a practice that was accepted as a good practice in many countries. In addition, it was observed that the Working Group had not objected to the content of former draft article 16 but had agreed that it should be dealt with in the Guide, since it more properly belonged in a law on arbitration rather than in a law on conciliation. In that connection, it was said that that argument was not convincing, since the draft Model Law included several provisions addressing issues relating to arbitration.

108. While there was support for that suggestion, a number of objections were also raised. One objection was that a footnote along the lines of former draft article 16 would be inconsistent with draft article 1, paragraph (8), according to which the draft Model Law did not deal with cases where a judge or arbitrator, in the course of a court or an arbitral proceeding, attempted to facilitate a settlement. Another objection was that such a footnote would be inconsistent with draft article 13, the principle of which was that a

conciliator could not act as an arbitrator. It was mentioned that in some countries a situation dealt with in the proposed provision was viewed as unethical.

109. With a view to reaching a compromise solution, several suggestions were made, including suggestions: to include in the draft Model Law a footnote describing the various practices and not a model legislative provision; and to discuss the various practices in the Guide, drawing the attention of countries to the consequences of taking one or the other approach.

110. After discussion, as the Commission decided that former draft article 16 should not be reinstated as a footnote, the Commission reaffirmed the decision of the Working Group that the matter should be discussed in the Guide (see A/CN.9/506, para. 132).

Article 14. Resort to arbitral or judicial proceedings

111. Draft article 14 as considered by the Commission was as follows:

> "(1) Where the parties have agreed to conciliate and have expressly undertaken not to initiate during a specified period of time or until a specified event has occurred arbitral or judicial proceedings with respect to an existing or future dispute, such an undertaking shall be given effect by the arbitral tribunal or the court until the terms of the undertaking have been complied with.
>
> "(2) A party may nevertheless initiate arbitral or judicial proceedings where, in its sole discretion, it considers such proceedings necessary to preserve its rights. Initiation of such proceedings is not of itself to be regarded as a waiver of the agreement to conciliate or as a termination of the conciliation proceedings."

112. While support was expressed for the concept of draft article 14, a number of concerns were also expressed. One concern was that, in allowing parties to resort to arbitral or judicial proceedings at their discretion, paragraph (2) nullified the effect of paragraph (1). In order to address that concern, it was suggested reinstating the structure and approach of former draft article 15 (see A/CN.9/506, para. 124), which would prevent a party from unilaterally initiating arbitral or judicial proceedings when that was contrary to their express agreement. In support of that suggestion, it was stated that a provision along the lines of former draft article 15 would, on the one hand, give effect to express undertakings by parties not to initiate arbitral or judicial proceedings and, on the other hand, allow the parties to resort to arbitral or judicial proceedings in common situations in which the parties agreed to conciliate without concluding a specific agreement not to initiate arbitral or judicial proceedings during a specified period. However, that suggestion was widely opposed. It was stated that the Working Group had considered the matter, found a number of problems with the former draft article 15 (see A/CN.9/506, para. 127) and decided in favour of the approach taken in the current draft article 15 (see A/CN.9/506, para. 129). In addition, it was stated that the decision of the Working Group was acceptable, since inability of the party to initiate court proceedings in certain situations would discourage parties from entering into conciliation agreements. Moreover, it was said that preventing access to courts even in the case of an express waiver of that right by the parties might raise constitutional law issues in that access to courts was in some jurisdictions regarded as an inalienable right.

113. It was suggested that draft article 14 should address itself only to the parties (as did article 16 of the UNCITRAL Conciliation Rules) and not the arbitral tribunal or the court. That suggestion was not accepted.

114. A suggestion was made that draft Model Law did not go far enough in ensuring the effectiveness of conciliation agreements in that it addressed only express waivers of the right to initiate arbitral or judicial proceedings, while the draft Model Law did not deal with the effectiveness of the more usual conciliation agreements which were not combined with an express waiver of such a right during a specified period of time. According to that suggestion it should be clarified, either in the Model Law or in the Guide, that, when the parties agreed to conciliate, such agreement was binding in the sense that the parties committed themselves to making a good faith attempt to conciliate and that therefore the arbitral or judicial tribunal should stay the proceedings until such a good faith attempt had been made. While there was no fundamental opposition to the idea underlying that suggestion, namely that agreements to conciliate were binding under their own terms, it was observed that agreements to conciliate were drafted in many different ways reflecting a broad spectrum of expectations of parties regarding their behaviour in case of a dispute. It

was considered in response that the effect of agreements to conciliate should depend on the manner in which such agreements were interpreted pursuant to the applicable law of contract, which, however, the Model Law did not attempt to unify. Thus, the Commission confirmed its decision made by the Working Group that the Model Law should deal only with the effect of express waivers of the right to initiate arbitral or judicial proceedings and not with the contractual effects of agreements to conciliate with respect to such right.

115. The concern was expressed that paragraph (2), by allowing a party to initiate adversary proceedings "in its sole discretion", which constituted a purely subjective criterion, could render the rule enshrined in paragraph (1) ineffective. In order to address that concern, it was suggested that the words "in its sole discretion" should be deleted. That suggestion was met with a number of objections. It was stated that, in the absence of such a subjective criterion, a party would run the risk of losing its rights if it were unable to take steps, including the initiation of arbitral or judicial proceedings (including insolvency proceedings). The Commission considered that the draft Model Law should be drafted to control that risk. It was explained that, for that reason, article 16 of the UNCITRAL Conciliation Rules allowed a party to initiate arbitral or judicial proceedings where, "in his opinion", such proceedings were necessary for preserving rights. In addition, it was said that, by providing comfort to the parties that they would not run the risk of losing their rights, the Model Law would promote the use of conciliation. Moreover, the opinion was expressed that deciding what was "necessary" to preserve rights (paragraph (2)) involved judgement not only as a matter of law but also commercial judgement, which could only be left to the subjective assessment of the affected party. It was added that, if that ability of the parties to determine what was commercially necessary for them were to be taken away from them, they would be inclined to avoid conciliation.

116. Yet another concern was that the juxtaposition of the duty of the court to give effect to the parties' waiver of the right to initiate arbitral or judicial proceedings and the right of the parties to initiate arbitral or judicial proceedings to preserve their rights gave the impression that paragraph (2) was inconsistent with paragraph (1). In order to address that concern, it was suggested merging the two paragraphs by adding at the end of paragraph (1) the words "except to the extent necessary for a party, in its opinion", deleting the words "a party may nevertheless initiate arbitral or judicial proceedings where, in its sole discretion, it considers such proceedings necessary" and adding, after the words "in its opinion", the words "to preserve its rights. Initiation of such proceedings is not of itself to be regarded as a waiver of the agreement to conciliate or as a termination of the conciliation proceedings." In support of that suggestion, it was stated that the suggested revision of draft article 14 would clarify that the right of the parties to resort to arbitral or judicial proceedings was an exception to the duty of arbitral or judicial tribunals to stay any proceeding in the case of a waiver by the parties of the right to initiate arbitral or judicial proceedings. While some doubt was expressed as to whether the words "in its opinion", which were contained in article 16 of the UNCITRAL Conciliation Rules, had a different meaning from the words "in its sole discretion", the Commission nevertheless adopted the suggestion. The Commission also noted that some additional classification of the operation of article 14, should be provided in the Guide.

117. In response to a question, it was explained that article 14 did not refer only to proceedings to obtain provisional measures of protection but also to any action before an arbitral or judicial tribunal, including action taken by a party to preserve its rights before expiration of a prescription period. In the discussion, it was suggested that the Guide should clarify that a party might initiate court or arbitral proceedings also where one of the parties remained passive and thus hindered implementation of the conciliation agreement. On the other hand, it was stated that in such a case the other party could initiate judicial or arbitral proceedings after the conciliation proceedings were terminated pursuant to draft article 12.

118. Subject to the decided change, the Commission adopted draft article 14 and referred it to the drafting group.

Article 15. Enforceability of settlement agreement

119. Draft article 15 as considered by the Commission was as follows:

> "If the parties reach and sign an agreement settling a dispute, that settlement agreement is binding and enforceable ... [*the enacting State*

> *inserts a description of the method of enforcing settlement agreements or refers to provisions governing such enforcement*]."

120. It was observed that, as referred to in draft article 15, the nature of the settlement agreements were left open-ended. It was suggested that its contractual nature should be indicated in the draft provision. As to the notion of the settlement agreement being "enforceable", it was also suggested that the draft provision should explain whether the settlement agreement should benefit from some form of expedited recognition of its enforceability, for example by equating a settlement agreement with an arbitral award or a judicial decision.

121. The view was expressed that converting a conciliation settlement into an arbitral award was not acceptable since it would amount to attaching the same status to a contract between two private persons as to a court or arbitral decision. Two possibilities were envisaged: either the conciliation settlement was turned into a "real" arbitral award, with the risk that the proceedings would become far more cumbersome and more expensive for the parties (thus running counter to the whole spirit of conciliation); or else there could be a kind of quasi-automatic equating of the conciliation settlement to an arbitral award, which would entail some degree of exposure to abuse since the contract (conciliation settlement) would not generally be subject to scrutiny by a court of the country in which the settlement was invoked (see A/CN.9/513, comment by France).

122. With a view to enhancing the legal value of settlement agreements, yet preserving all the options that an enacting State might wish to consider in dealing with the issue of enforceability of a settlement agreement, and avoiding the reference to an arbitral award, the following wording was proposed as a substitute for draft article 15: "If the parties reach and sign an agreement settling a dispute, that settlement agreement is binding. The authority of res judicata and/or the enforceability of such agreement shall, as appropriate, be recognized or granted by the law or the competent authority of [the country in which the agreement is invoked] [the enacting State]". No support was expressed for the proposal.

123. The discussion then focused on the opening words of draft article 15 ("If the parties reach and sign an agreement"). It was pointed out that the requirement that the settlement agreement should be signed might be important to facilitate the adduction of evidence regarding the existence and contents of the settlement agreement. A proposal was made that the opening words of draft article 15 should read along the following lines: "The settlement agreement is to be signed if such a signature requirement is necessary to ensure the enforceability under the law of the enacting State". No support was expressed for the proposal. The prevailing view was that, in line with modern contract law and consistent with the need to facilitate electronic commerce, no writing or signature requirement should be imposed regarding the conclusion of the settlement agreement. After discussion, it was agreed that the opening words of draft article 15 should read as follows: "If the parties conclude an agreement". It was also agreed that the Guide should make it clear that the purpose of the Model Law was not to prohibit the laws of the enacting State from imposing form requirements such as a requirement for signature or written form where such a requirement was considered essential.

124. The Commission proceeded to consider the implications of using the words "binding and enforceable". It was generally agreed that those words were intended to reflect the common understanding that conciliation settlements were contractual in nature. While the word "binding" reflected the creation of a contractual obligation as between the parties to the settlement agreement, the word "enforceable" reflected the nature of that obligation as susceptible to enforcement by courts, without specifying the nature of such enforcement. It was thus agreed that the two words "binding" and "enforceable" served distinct purposes and were not merely repetitious. It was pointed out that the Model Law provided no new regulations concerning the formation of settlement agreements or their enforcement, and left those matters to be determined in accordance with the applicable municipal law. In that connection, it was noted that some States considered settlement agreements to be subject to the same rules of formation and enactment as other commercial contracts, while other States had special regimes regulating those matters, including, in some States, mechanisms for expediting execution of settlements. Accordingly, the Model Law included at the end of article 15 words in italics stating that an enacting State might insert a description or reference to its own system governing enforcement of settlement agreements. It was pointed out, however, that, in certain

legal systems or in certain language versions, the word "enforceable" might be interpreted in a manner that suggested a high degree of executability of the settlement agreement, thus deviating from the above-mentioned neutrality. For example, "enforceable" might be construed as indicating that the court would enforce a settlement agreement in a more expeditious way than it would enforce other types of contracts. However, in other legal systems or language versions the words "binding and enforceable" were used simply to refer to the legal value of contracts in general. To avoid any misinterpretation, it was suggested that the word "enforceable" should not be used. Instead, draft article 15 should recognize the right of any party to the settlement agreement to present that agreement before a court to obtain its execution where the applicable law so permitted. Under that suggestion, the Guide could provide examples of procedures that might be used to obtain such execution and list the defences to enforcement that might be admissible. While some support was expressed in favour of that suggestion, the prevailing view was that the issue of enforcement, defences to enforcement, and designation of courts or other authorities from whom enforcement of a settlement agreement might be sought should be left to applicable municipal law.

125. After discussion, the Commission decided that the words "binding and enforceable" should be retained. In those language versions where the word "enforceable" might give rise to ambiguity, it was found that a more neutral wording should be used, along the lines of "susceptible to enforcement".

126. The Commission adopted the substance of article 15 as amended and referred it to the drafting group.

Continuation of the discussion of article 3

127. Having completed its deliberations regarding the substantive provisions of the draft Model Law, the Commission reverted to the text of article 3, with a view to determining whether provisions in addition to article 2 and article 7, paragraph (3), should be listed as mandatory.

128. The view was expressed that article 14 should be listed among those provisions of the Model Law that were not open to contractual derogation. It was pointed out that, since article 14 had been structured into a rule that operated only where a specific agreement had been concluded between the parties, and an extremely broad range of unilaterally decided exceptions to that rule, it was difficult to imagine how contractual derogations under article 3 would fit in the overall structure of article 14. In the view of other delegations, the reason for listing article 14 as mandatory was that a party should not be permitted to vary the application of a provision that guaranteed what was regarded by those delegations as the constitutional right of the parties to initiate judicial proceedings, irrespective of any undertaking that might have been made not to use that right. Yet another view was that, although article 14 contained provisions of contract law that should be open to contractual derogation, article 14 also contained provisions of procedural law that should be regarded as mandatory.

129. Various views were expressed, however, in favour of not listing article 14 as a mandatory provision. In the view of a number of delegations that criticized the structure and contents of article 14, article 3 provided a welcome opportunity for the parties to set aside the entire mechanism of article 14, thus allowing, for example, those parties to agree on effective undertakings not to initiate judicial proceedings during the conciliation. In the view of other delegations, the preservation of party autonomy required that the parties who had mutually agreed not to initiate judicial proceedings under article 14 should be allowed to come to a different agreement at a later stage. Another view was that article 14 should not be listed as a mandatory provision because it was logically susceptible to derogations.

130. A question was raised regarding the interplay between articles 3 and 14 in circumstances where, for example, the parties had agreed to conciliate, expressly undertaken not to initiate judicial proceedings during a specified period of time, and subsequently terminated the conciliation proceedings before the expiration of that period of time. In such a case, the question might arise whether the parties continued to be bound by their original undertaking not to initiate judicial proceedings or whether that undertaking was modified by the termination of conciliation proceedings. The Commission did not discuss all aspects of that question and it was understood that the result depended on the terms of the commitment not to initiate court proceedings and of any agreement to terminate the conciliation proceedings.

131. After discussion, the Commission decided not to include article 14 among those provisions of the Model Law that could not be excluded or varied by agreement of the parties.

132. The view was expressed that article 15 should be listed among those provisions of the Model Law that were not open to contractual variation. It was stated that, to the extent article 15 established the rule that settlement agreements were binding, no contractual derogation to that rule was logically acceptable. It was also stated that, while no contractual derogation should be allowed regarding the binding nature of the settlement agreement, the parties would remain free to agree that the result of a conciliation process would take a form different from that of a settlement agreement. While some support was expressed in favour of that view, it was pointed out that excluding the possibility of a contractual derogation to article 15 might unduly undermine the right of the parties to agree on a settlement that would have a lesser degree of enforceability than that contemplated in article 15.

133. The view was also expressed that partners often turned to conciliation because of its non-binding nature, using it as a way forward from a dispute. Excluding article 15 from the possibility of variation by the parties would run counter to parties using conciliation for that purpose.

134. After discussion, the Commission decided not to include article 15 among those provisions of the Model Law that could not be excluded or varied by agreement of the parties.

Footnote 1 to draft article 1

135. The proposed draft text for incorporation in footnote 1 of article 1 (by reference to paragraph numbers of article 1 as contained in document A/CN.9/506) as considered by the Commission was as follows:

> "1. 'In article 1, paragraph 1, delete the word "international".'
>
> 'Delete paragraph 3 of article 1.'
>
> 'Delete paragraph 4 of article 1.'
>
> '[Delete paragraph 5 of article 1] [Replace paragraph 5 of article 1 with the words "This Law also applies when the parties so agree".].'
>
> "2. Proposed text for inclusion in paragraph 47 of the draft Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Conciliation:
>
> 'States that enact this Model Law to apply to domestic as well as international conciliation may wish, in paragraph 5 of article 6, to delete the words "and, with respect to a sole or third conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties". Alternatively, such States may wish to modify paragraph 5 of article 6 by replacing the words "and, with respect to a sole or third conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties" with "and, with respect to a sole or third conciliator, shall in the case of an international dispute, take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties" and including a definition of both "international" and "place of business" along the lines of paragraphs 3 and 4 of article 1.'"

136. Concern was expressed that, in respect of the proposal concerning paragraph (5) of article 1, the text appearing in the second set of square brackets of the proposed footnote ["This Law applies where the parties so agree."] should be aligned with the text of paragraph (5) as it would apply in the case of international conciliation, by adding a reference to commercial conciliation: "This Law applies to commercial conciliation where the parties so agree". Without that addition, it was suggested that the Model Law would apply differently in the two cases; in international conciliation, it would be limited to commercial conciliation, but, where it applied to both domestic and international conciliation, that limitation would not operate.

137. It was observed that the drafting of the proposed text of paragraph (1) of footnote 1 was intended to cover several circumstances where it might be

appropriate for the parties to be able to agree to the application of the Model Law. Those circumstances included very informal conciliation proceedings where it was uncertain whether the Model Law would apply under article 1, paragraph (2); conciliation proceedings which were conducted, for example, using electronic means between parties located in a number of different States and it was not clear what was the applicable law and whether or not the Model Law would apply; and circumstances where it was not clear whether the dispute would fall within the definition of commercial in article 1. Some support was expressed in favour of that flexible approach and in favour of retaining the text in the second set of square brackets in paragraph (1) of the proposed footnote.

138. A contrary view was that the Model Law should only apply to commercial conciliation, whether that conciliation was international or domestic and a reference to commercial conciliation should be included in the text of the footnote as proposed. In that case, the text of the footnote would reflect the text of paragraph (5) of article 1 as earlier adopted by the Commission. It was proposed that the same result could also be achieved by adopting the text appearing in the first set of square brackets in paragraph (1) of the proposed footnote text, resulting in the deletion of paragraph (6) of article 1 where States wished to apply the Model Law to both domestic and international commercial conciliation. Wide support was expressed in favour of the application of the Model Law to commercial conciliation, whether domestic or international, and in favour of the adoption of the text in the first set of square brackets in paragraph (1) of the proposed footnote text. The Commission adopted that approach.

139. A concern was expressed that, where the Model Law was to apply to domestic conciliation, the reference to its international origin in article 2 might not be appropriate. In response, it was pointed out that that same paragraph appeared in a number of other UNCITRAL texts (e.g., the UNCITRAL Model Law on Electronic Commerce) which could apply both domestically and internationally. It was of considerable use in promoting uniform interpretation by reference to international standards even where the text applied domestically. Without such a reference, there was a significant possibility of domestic interpretations differing from the interpretation of the text where it applied internationally, an undesirable result in view of the goal of uniformity.

140. The Commission adopted the substance of the text of the proposed footnote to draft article 1, retaining the text in the first set of square brackets in paragraph (1), and referred it to the drafting group.

D. Adoption of the UNCITRAL Model Law on International Commercial Conciliation

141. The Commission, after consideration of the text of the draft Model Law as revised by the drafting group, adopted the following decision at its 750th meeting, on 24 June 2002:

> "*The United Nations Commission on International Trade Law*,
>
> "*Recognizing* the value of conciliation or mediation as a method of amicably settling disputes arising in the context of international commercial relations,
>
> "*Noting* in this connection that the expression 'conciliation' includes mediation and other processes of similar import,
>
> "*Convinced* that the establishment of a model law on conciliation that is acceptable to States with different legal, social and economic systems would contribute to the development of harmonious international economic relations,
>
> "*Believing* that the UNCITRAL Model Law on International Commercial Conciliation will significantly assist States in enhancing their legislation governing the use of modern conciliation or mediation techniques and in formulating such legislation where none currently exists,
>
> "*Noting* that the preparation of the UNCITRAL Model Law on International Commercial Conciliation was the subject of due deliberation and extensive consultation after circulation of the draft text for observations of Governments and interested organizations,
>
> "*Convinced* that the Model Law, together with the UNCITRAL Conciliation Rules,[4]

---

[4] United Nations publication, Sales No. E.81.V.6.

> recommended by the General Assembly in its resolution 35/52 of 4 December 1980, significantly contributes to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations,
>
> "1. *Adopts* the UNCITRAL Model Law on International Commercial Conciliation as it appears in annex I to the report of the United Nations Commission on International Trade Law on its thirty-fifth session;
>
> "2. *Requests* the Secretary-General to transmit the text of the UNCITRAL Model Law on International Commercial Conciliation, together with *travaux préparatoires* from the thirty-fifth session of the Commission, and with the Guide to Enactment and Use of the Model Law to be finalized by the Secretariat based on the deliberations of the Commission at that thirty-fifth session, to Governments and to dispute settlement institutions and other interested bodies, such as chambers of commerce;
>
> "3. *Recommends* that all States give due consideration to the Model Law on International Commercial Conciliation, in view of the desirability of uniformity of the law of dispute settlement procedures and the specific needs of international commercial conciliation or mediation practice."

E. Draft Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Conciliation

142. The Commission entrusted the secretariat with the finalization of the Guide to Enactment and Use of the Model Law, based on the draft prepared by the secretariat (A/CN.9/514) and on the deliberations of the Commission at its current session. The secretariat was invited to publish the finalized Guide together with the Model Law. It was generally agreed that, in preparing the final version of the Guide, the secretariat should take into account the comments and suggestions expressed in the course of the discussion by the Commission but that the secretariat should have discretion regarding the manner and the extent to which such comments and suggestions should be reflected in the Guide.

143. The Commission proceeded with a detailed review of the draft Guide (A/CN.9/514).

Purpose of the Guide

Paragraphs 1 to 4

144. The Commission decided that paragraph 4 should read along the lines of: "The Commission entrusted the secretariat with the finalization of the Guide, based on the draft prepared by the secretariat (A/CN.9/514) and on the deliberations of the Commission at its current session, taking into account comments and suggestions made in the course of discussions by the Commission and other suggestions in the manner and the extent that the secretariat determined in its discretion. The secretariat was invited to publish the finalized Guide together with the Model Law."

Notion of conciliation and purpose of the Model Law

Paragraphs 5 to 10

145. With respect to paragraph 5, it was suggested that, in describing conciliation, the Guide should make it clear that an essential feature of conciliation was that it was based on a request addressed by the parties in dispute to a third party. As to paragraph 7, it was pointed out that, should the notion of "alternative dispute resolution" be used, the Guide should make it clear that the various techniques encompassed under that notion were to be regarded as alternatives to judicial dispute resolution and thus included arbitration. With respect to paragraph 9, it was suggested that the Guide should make it clear that procedural issues such as the admissibility of evidence in judicial or arbitral proceedings was not governed mainly by rules such as the UNCITRAL Conciliation Rules but by applicable statutory law. More generally with respect to paragraphs 5 to 10, it was suggested that the Guide might need to describe more extensively the attractive features of conciliation as a dispute settlement technique.

The Model Law as a tool for harmonizing legislation

Paragraphs 11 and 12

146. No comment was made in respect of paragraphs 11 and 12.

Background and history

Paragraphs 13 to 17

147. In the context of paragraph 13, doubts were expressed as to whether the use of "non-adjudicative dispute settlement methods" would increase "stability in the marketplace". It was suggested that a reference to "cost-effectiveness in the marketplace" might be more accurate. With respect to paragraph 14, it was suggested that stating that "the objectives of the Model Law ... are essential for fostering economy and efficiency in international trade" might overstate the point. It was suggested that the Guide should state that the objectives of the Model Law were important for fostering economy and efficiency in international trade. As to paragraph 16, the view was expressed that too much emphasis was being placed on the description of arbitration. As to paragraph 17, a question was raised as to the usefulness of providing in the Guide such a level of historical detail. A suggestion was made that the history of the Model Law might be dealt with in tabular form in an annex to the Guide. It was widely agreed in response that a detailed account of the legislative history of the Model Law might be regarded as particularly helpful in certain countries considering enactment of the Model Law. Furthermore, it was pointed out that recording in the body of a guide the detailed history of the text was in line with the practice followed in respect of previous model laws adopted by UNCITRAL and accompanied by a guide to enactment.

Scope

Paragraphs 18 and 19

148. No comment was made in respect of paragraphs 18 and 19.

Structure of the Model Law

Paragraphs 20 to 23

149. With respect to paragraph 22, it was suggested that the Guide should reflect more clearly that, in structuring the Model Law, the drafters had focused on avoiding information being spilled over from conciliation proceedings into arbitral or court proceedings. No further comment was made on paragraphs 20 to 23.

Assistance from the UNCITRAL secretariat

Paragraphs 24 and 25

150. No comment was made in respect of paragraphs 24 and 25.

Article 1. Scope of application

Paragraphs 26 to 35

151. With respect to paragraph 27, it was suggested that the Guide should make it clear that the text of footnote 2 was not intended to provide a definition of the term "commercial". Instead, that footnote provided an illustrative and open-ended list of relationships that might be described as "commercial" in nature. In the context of paragraphs 29 and 30, it was suggested that, in verifying whether, in a given factual situation, the elements set forth in paragraph (2) of article 1 for the definition of conciliation were met, courts should be invited to consider any evidence of conduct of the parties showing that they were conscious (and had an understanding) of being involved in a process of conciliation. With respect to paragraph 31, it was suggested that the Guide should make it clear that article 1 was not intended to interfere with the operation of the rules of private international law.

152. With respect to paragraph 35, several suggestions were made. One suggestion was that the Guide should make it clear that, in referring to "attempts [by a judge or arbitrator] to facilitate a settlement", paragraph (8) of article 1 was intended to distinguish between cases where the court or the arbitrator would act as a facilitator and those cases where the court or the arbitrator would act as a conciliator. In the former case, the judge or the arbitrator would take the initiative of acting as facilitator. In that case, the action of the judge or arbitrator acting as facilitator would not be covered by the Model Law. In the latter case, however, the action of the judge or arbitrator as a conciliator would be the result of the request of the parties in dispute and would fall within the scope of the Model Law. Another suggestion was that paragraph 35 should contain an indication along the following lines: "The Model Law is not intended to indicate whether or not a judge or an arbitrator may conduct conciliation in the course of court or arbitral proceedings".

153. No further comment was made in respect of paragraphs 26 to 35.

Article 2. Interpretation

Paragraphs 36 and 37

154. No comment was made in respect of paragraphs 36 and 37.

Article 3. Variation by agreement

Paragraph 38

155. It was suggested that the Guide might need to establish a distinction between the general rule set forth in article 3, under which parties might freely "agree to exclude or vary any of the provisions of [the Model] Law", and the meaning of the words "unless otherwise agreed", which had been inserted in certain provisions of the Model Law. Under the suggested distinction, the general rule would simply recognize the possibility for the parties to avoid by contract the application of those provisions of the Model Law that were not specifically established as mandatory by article 3. However, article 3 would not establish the freedom of the parties to create an entirely new set of contractual obligations distinct from those established under the Model Law. The full autonomy of the parties would thus only be recognized by those provisions that were prefaced by the words "unless otherwise agreed". The suggestion was not adopted by the Commission. It was widely agreed that the Guide should not seek to establish any shade of meaning between article 3 and those provisions prefaced by the words "unless otherwise agreed". It was agreed that, in both cases, the Model Law was intended to reflect full autonomy of the parties to derogate from the provisions of the Model Law and to create a contractual framework entirely distinct from the provisions of the Model Law. The words "unless otherwise agreed" had been included in certain provisions mainly for educative reasons. It was suggested that the Guide should include wording along the following lines: "The use of the phrase 'unless otherwise agreed' does not mean that article 3 does not apply where that phrase does not appear". No further comment was made in respect of paragraph 38.

Article 4. Commencement of conciliation proceedings

Paragraphs 39 to 44

156. With respect to paragraph 44, it was suggested that the Guide should alert enacting States to the risks that might result from the adoption of article X. It was generally agreed in response that the Guide should reflect the arguments exchanged both against and in favour of the adoption of article X, as reflected in paragraphs 33 and 34, above. No further comment was made in respect of paragraphs 39 to 44 of the draft Guide.

Articles 5 and 6. Number and appointment of conciliators

Paragraphs 45 to 48

157. With respect to paragraph 46, it was pointed out that, as currently drafted, the Guide suggested that conciliation was necessarily conducted between two parties. It was suggested that the final text should reflect the multiparty approach to conciliation adopted by the Commission. With respect to paragraph 47, it was suggested that the words "reference has to be had" connoted an obligation and should be replaced by wording along the lines of "reference may be had". Another suggestion was that the Guide should make it clear that a failure to disclose facts which might give rise to justifiable doubts within the meaning of paragraph (6) of article 6 should not create a ground for setting aside a settlement agreement that would be additional to the grounds already available under applicable contract law (see para. 50, above). No further comment was made in respect of paragraphs 45 to 48.

Article 7. Conduct of conciliation

Paragraphs 49 to 53

158. With respect to paragraph 51, it was suggested that the Guide should reflect that the Model Law did set out a standard of conduct to be applied by a conciliator. It was also suggested that the sentence "some concern was expressed that the inclusion of a provision governing the conduct of the conciliation could have the unintended effect of inviting parties to seek annulment of the settlement agreement by alleging unfair treatment" should be deleted since it was unnecessary to advise the parties in that respect. It was recalled that the Commission had agreed that the Guide should make it clear that paragraph (3) of article 7 was intended to govern the conduct of the conciliation proceedings and that it did not address the contents of the settlement agreement (see para. 58, above).

159. It was generally felt that paragraph 52 should be deleted, since there was no need for the Guide to restate the UNCITRAL Conciliation Rules or to discuss the merits of national laws in the context of that article. No further comment was made in respect of paragraphs 49 to 53.

Article 8. Communication between conciliator and parties

Paragraphs 54 and 55

160. Doubts were expressed as to whether the notion of "equality of treatment" should be used and, more generally, as to whether paragraph 55 should be retained in the Guide. It was recalled in response that paragraph 55 reflected a compromise reached by the Working Group at its thirty-fourth session (A/CN.9/487, para. 129), which the Commission did not wish to revise. After discussion, it was generally agreed that the substance of paragraph 55 should be relocated in the section of the Guide dealing with paragraph (3) of article 7. No further comment was made in respect of paragraphs 54 and 55.

Article 9. Disclosure of information between the parties

Paragraphs 56 and 57

161. With respect to paragraph 56, the view was expressed that the tone of the last sentence was overly derogatory regarding the practice under which the consent of a party giving information should be sought before any communication of that information might be given to the other party. It was recalled that such practice was widely followed with good results in a number of countries. It was suggested that paragraph 55 should be redrafted to make it clear that, in certain countries, such practice was enshrined in mediation rules. The Model Law provided a recommendation for parties who did not have such a rule and was consistent with the UNCITRAL Conciliation Rules. It was recalled that the Commission had earlier agreed that the Guide should contain a clear recommendation to conciliators that they should inform the parties that information communicated to a conciliator might be disclosed unless the conciliator was informed otherwise (see para. 70, above). It was suggested that paragraph 56 should be redrafted to emphasize the intent to foster candid communication between each party and the conciliator.

162. With respect to the words "the substance of that information", it was suggested that the Guide should make it clear that the current wording, along the lines of article 10 of the UNCITRAL Conciliation Rules, had been preferred to the words "that information" to avoid burdening the conciliator with an obligation to communicate the literal content of any information received from the parties (see para. 70, above).

153. It was recalled that the title of article 9 had been amended to read "Disclosure of information". No further comment was made in respect of paragraphs 56 and 57.

Article 10. Duty of confidentiality

Paragraphs 58 to 60

164. The Commission was reminded of a proposal that the words "duty of" be deleted from the title and that an explanation as to the meaning of draft article 10 be included in the draft Guide (see para. 76, above).

Article 11. Admissibility of evidence in other proceedings

Paragraphs 61 to 68

165. The Commission was reminded of the need to adjust the last sentence of paragraph 61 to align it to the text of the draft article as revised.

166. A number of suggestions were made. One suggestion was that in paragraphs 62 to 67 it should be made clear that draft article 11 provided for two results with respect to admissibility of evidence in other proceedings: an obligation incumbent upon the parties not to rely on the types of evidence specified in article 11 and an obligation of courts to treat such evidence as inadmissible. Another suggestion was that the draft Guide should clarify that the term "similar proceedings" covered discovery and depositions in countries where such methods of obtaining evidence were used. Yet another suggestion was that in paragraph 67 it should be made clear that statements inadmissible in other proceedings included "documents prepared solely for the conciliation proceedings".

167. Yet another suggestion was that the draft Guide should explain that the term "law" in draft article 11, paragraph (3), meant legislation rather than orders by arbitral or judicial tribunals ordering a party to a conciliation, at the request of another party, to disclose

the information mentioned in draft article 11, paragraph (1). In support, it was stated that, without such a statement, the confidentiality of information used in conciliation would be seriously compromised, since the second sentence of draft article 11, paragraph (3), seemed to introduce a broad exception to the principle of non-admissibility of such evidence. While it was widely agreed that the term "law" should be given a narrow interpretation, it was noted that orders by a court (such as disclosure orders combined with a threat of sanctions, including criminal sanctions, directed to a party or another person who could give evidence referred to in draft article 11(1)) were normally based on legislation and that certain types of such orders (in particular, if based on the law of criminal procedure or laws protecting public safety or professional integrity) might be regarded as exceptions to the rule of article 11(1). However, it was considered that, when disclosure of evidence was requested by a party so as to support its position in litigation or similar proceedings (without there existing overriding public policy interests such as those referred to in paragraph 67 of the draft Guide, A/CN.9/514), the court would be barred from issuing a disclosure order. The Commission requested the secretariat to express that narrow meaning of the expression "law" in the Guide, recognizing that, in certain systems, the term "law" included not only the texts of statutes, but also court decisions. The examples given in paragraph 67 of the draft Guide (A/CN.9/514) were to be reviewed so as to ensure that they would be properly understood in interpreting the last sentence of article 11(3).

Article 12. Termination of conciliation

Paragraph 69

168. A number of suggestions were made. One suggestion was that the draft Guide should explain that States adopting a provision along the lines of draft article X, in the interest of certainty with respect to the time of suspension and resumption of limitation periods, might need to consider requiring a written declaration for the termination of conciliation. It was widely felt that that clarification should be made in the context of the discussion in the draft Guide of draft article X.

169. Another suggestion was that the draft Guide should make it clear that conciliation could be terminated by conduct, such as an expression of a negative opinion by a party about the prospects of the conciliation, or refusal of a party to consult or to meet with the conciliator when invited. Some doubt was expressed as to the need to refer to conduct as a way to terminate conciliation, in particular, since in the case of abandonment of the proceedings by a party, the conciliator or the other party could declare them terminated. It was said in reply that conciliation was an informal process and that in some situations it might not be clear whether the parties were involved in settlement negotiations covered by the Model Law and that therefore informal methods of termination (including by conduct) should be allowed. However, it was pointed out that it was in the interest of legal certainty (in particular as regards subparagraph (d)) that conduct per se, without a statement or action that could be equated with "declaration", would not terminate conciliation proceedings. Yet another suggestion was that, to the extent a reference to "data message" appeared in the footnote, it should include a clarification of the meaning of the term "data message".

Article 13. Conciliator acting as arbitrator

Paragraphs 70 to 74

170. One suggestion was that it should be made clear that, while in some legal systems conciliators were permitted to act as arbitrators if parties so agreed and, in other legal systems, that was subject to rules in the nature of codes of conduct, the draft Model Law was neutral on that point. Another suggestion was that, in any event, the agreement of the parties and the conciliator should be able to override any such limitation, even where the matter was subject to rules in the nature of codes of conduct. A further suggestion was that it should be made clear that draft article 13 did not deal with situations in which arbitrators acted as conciliators, which was permitted in some legal systems. Yet another suggestion was that considerations governing a conciliator acting as an arbitrator might be relevant also in situations where a conciliator acted as a judge, and it was recalled that those situations were not addressed in the draft Model Law because they were rarer and because their regulation might interfere with national rules governing the judiciary. It was proposed mentioning those situations in the Guide so that enacting States would consider whether any special rule is needed in the context of their national rules governing the judiciary.

Article 14. Resort to arbitral or judicial proceedings

Paragraphs 75 and 76

171. Paragraphs 75 and 76 were not commented upon.

Article 15. Enforceability of settlement agreement

Paragraphs 77 to 81

172. A number of suggestions were made. One suggestion was that paragraphs 79 and 80 should be deleted, since such detail was not necessary and could cause confusion. That suggestion was objected to. It was stated that paragraphs 79 and 80 appropriately gave examples of ways in which settlement agreements could be enforced, in particular since draft article 15 left that matter to law applicable outside the draft Model Law. It was suggested that examples based on legislation of only two countries did not give a picture of the variety of approaches found in international practices and therefore should not be included. It was also observed that references to the laws of certain countries in paragraph 81 needed to be reviewed and corrected. Another suggestion was that paragraph 81 should be revised to avoid inadvertently giving the impression that draft article 15 was the result of an unhappy compromise.

Use of conciliation in multiparty situations

173. In order to emphasize the importance of conciliation in multiparty situations (and, inter alia, in cases of corporate insolvency), it was suggested that wording along the following lines should be included in the Guide:

> "Experience in some jurisdictions suggests that the Model Law would also be useful to foster the non-judicial settlement of disputes in multiparty situations, especially those where interests and issues are complex and multilateral rather than bilateral. Notable examples of these are disputes arising during insolvency proceedings or disputes whose resolution is essential to avoid the commencement of insolvency proceedings. Such disputes involve issues among creditors or classes of creditors and the debtor or among creditors themselves, a situation often compounded by disputes with debtors or contracting parties of the insolvent debtor. These issues may arise, for example, in connection with the content of a reorganization plan for the insolvent company; claims for avoidance of transactions that result from allegations that a creditor or creditors were treated preferentially; and issues between the insolvency administrator and a debtor's contracting party regarding the implementation or termination of a contract and the issue of compensation in such situations."

174. Support was expressed for that suggestion. It was stated that conciliation was being used with success in the case of complex, multiparty disputes. The example was given of conciliation before and after commencement of insolvency proceedings. It was observed that one of the benefits of the settlement of disputes through conciliation was the avoidance of insolvency. It was also said that, without overriding the insolvency proceedings, conciliation often usefully supplemented them, in particular in the case of reorganization. In addition, it was observed that, in many countries, insolvency courts were not prevented from attempting to facilitate a settlement. It was agreed that the text for the Guide should be carefully drafted, drawing attention to the need that conciliation proceedings should not interfere with the objectives of insolvency proceedings as expressed by the law governing such insolvency proceedings.

175. However, the concern was expressed that such a detailed reference to the use of conciliation in insolvency proceedings could inadvertently give the impression that the application of conciliation was somehow limited. In order to address that concern, the suggestion was made that the proposed paragraph should be included in the footnote to the Model Law that contained the definition of the term "commercial". There was no support for that suggestion. The suggestion was also made that reference should be made to other examples, such as disputes arising in the context of construction contracts, syndicated loans, franchising and distribution agreements and co-insurance policies. While interest was expressed in that suggestion, a note of caution was struck that having another list next to the practices listed as being commercial might cause confusion.

176. In response to a question, it was noted that the reference to multiparty relations might fit into the discussion on draft article 1.

177. After discussion, the Commission agreed to include in the Guide a reference to the use of

conciliation in multiparty relations, taking into account the views and concerns expressed.

IV. Arbitration

178. At its thirty-second session, in 1999, the Commission had before it a note entitled "Possible future work in the area of international commercial arbitration" (A/CN.9/460). Welcoming the opportunity to discuss the desirability and feasibility of further development of the law of international commercial arbitration, the Commission generally considered that the time had come to assess the extensive and favourable experience with national enactments of the UNCITRAL Model Law on International Commercial Arbitration (1985), as well as the use of the UNCITRAL Arbitration Rules and the UNCITRAL Conciliation Rules, and to evaluate in the universal forum of the Commission the acceptability of ideas and proposals for improvement of arbitration laws, rules and practices.[2]

179. The Commission entrusted the work to one of its working groups, which it named the Working Group on Arbitration, and decided that the priority items for the Working Group should be conciliation,[3] requirement of written form for the arbitration agreement,[4] enforceability of interim measures of protection[5] and possible enforceability of an award that had been set aside in the State of origin.[6]

180. At its thirty-third session, in 2000, the Commission had before it the report of the Working Group on Arbitration on the work of its thirty-second session (A/CN.9/468). The Commission took note of the report with satisfaction and reaffirmed the mandate of the Working Group to decide on the time and manner of dealing with the topics identified for future work. Several statements were made to the effect that, in general, the Working Group, in deciding the priorities of the future items on its agenda, should pay particular attention to what was feasible and practical and to issues where court decisions left the legal situation uncertain or unsatisfactory. Topics that were mentioned in the Commission as potentially worthy of consideration, in addition to those which the Working Group might identify as such, were the meaning and effect of the more-favourable-right provision of article VII of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter referred to as "the New York Convention") (A/CN.9/468, para. 109 (k)); raising claims in arbitral proceedings for the purpose of set-off and the jurisdiction of the arbitral tribunal with respect to such claims (para. 107 (g)); freedom of parties to be represented in arbitral proceedings by persons of their choice (para. 108 (c)); residual discretionary power to grant enforcement of an award notwithstanding the existence of a ground for refusal listed in article V of the 1958 New York Convention (para. 109 (i)); and the power by the arbitral tribunal to award interest (para. 107 (j)). It was noted with approval that, with respect to "online" arbitrations (i.e. arbitrations in which significant parts or even all of arbitral proceedings were conducted by using electronic means of communication) (para. 113), the Working Group on Arbitration would cooperate with the Working Group on Electronic Commerce. With respect to the possible enforceability of awards that had been set aside in the State of origin (para. 107 (m)), the view was expressed that the issue was not expected to raise many problems and that the case law that gave rise to the issue should not be regarded as a trend.[7]

181. At its thirty-fourth session, the Commission took note with appreciation of the reports of the Working Group on the work of its thirty-third and thirty-fourth sessions (A/CN.9/485 and A/CN.9/487, respectively). The Commission commended the Working Group for the progress accomplished so far regarding the three main issues under discussion, namely the requirement of the written form for the arbitration agreement, the issues of interim measures of protection and the preparation of a model law on conciliation.[8]

182. At its current session, the Commission took note with appreciation of the report of the Working Group on the work of its thirty-sixth session (A/CN.9/508). The Commission commended the Working Group for the progress accomplished so far regarding the issues under discussion, namely the requirement of the written form for the arbitration agreement and the issues of interim measures of protection.

183. With regard to the requirement of written form for the arbitration agreement, the Commission noted that the Working Group had considered the draft model legislative provision revising article 7, paragraph (2) of the Model Law on Arbitration (A/CN.9/WG.II/WP.118, para. 9) and discussed a draft interpretative instrument regarding article II(2) of the New York Convention

(paras. 25-26). The Commission noted that the Working Group had not reached consensus on whether to prepare an amending protocol or an interpretative instrument to the New York Convention and that both options should be kept open for consideration by the Working Group or the Commission at a later stage. The Commission noted the decision of the Working Group to offer guidance on interpretation and application of the writing requirements in the New York Convention with a view to achieving a higher degree of uniformity. A valuable contribution to that end could be made in the guide to enactment of the draft new article 7 of the UNCITRAL Model Law on Arbitration, which the secretariat was requested to prepare for future consideration by the Working Group, by establishing a "friendly bridge" between the new provisions and the New York Convention, pending a final decision by the Working Group on how best to deal with the application of article II(2) of the Convention (A/CN.9/508, para. 15). The Commission was of the view that member and observer States participating in the Working Group's deliberations should have ample time for consultations on those important issues, including the possibility of examining further the meaning and effect of the more-favourable-right provision of article VII of the New York Convention, as noted by the Commission at its thirty-fourth session.[9] For that purpose, the Commission considered that it might be preferable for the Working Group to postpone its discussions regarding the requirement of written form for the arbitration agreement and the New York Convention until its thirty-eighth session, in 2003.

184. With regard to the issues of interim measures of protection, the Commission noted that the Working Group had considered a draft text for a revision of article 17 of the Model Law (A/CN.9/WG.II/WP.119, para. 74) and that the secretariat had been requested to prepare revised draft provisions, based on the discussion in the Working Group, for consideration at a future session. It was also noted that a revised draft of a new article prepared by the secretariat for addition to the Model Law regarding the issue of enforcement of interim measures of protection ordered by an arbitral tribunal (para. 83) would be considered by the Working Group at its thirty-seventh session (A/CN.9/508, para. 16).

V. Insolvency law

185. The Commission, at its thirty-second session in 1999, had before it a proposal by Australia (A/CN.9/462/Add.1) on possible future work in the area of insolvency law. According to that proposal, the Commission, in view of its universal membership, its previous successful work on cross-border insolvency and its established working relations with international organizations that had expertise and interest in the law of insolvency, was an appropriate forum for the discussion of insolvency law issues. The Commission was urged in that proposal to consider entrusting a working group with the development of a model law on corporate insolvency to foster and encourage the adoption of effective national corporate insolvency regimes.

186. At that session, the Commission recognized the importance to all countries of strong insolvency regimes. The view was expressed that the type of insolvency regime that a country had adopted had become a "front-line" factor in international credit ratings. Concern was expressed, however, about the difficulties associated with work on an international level on insolvency legislation, which involved sensitive and potentially diverging socio-political choices. In view of those difficulties, the fear was expressed that the work might not be brought to a successful conclusion. It was said that a universally acceptable model law was in all likelihood not feasible and that any work needed to take a flexible approach that would leave options and policy choices open to States. While the Commission heard expressions of support for such flexibility, it was generally agreed that the Commission could not take a final decision on committing itself to establishing a working group to develop model legislation or another text without further study of the work already being undertaken by other organizations and consideration of the relevant issues.

187. To facilitate that further study, the Commission decided to convene an exploratory session of a working group to prepare a feasibility proposal for consideration by the Commission at its thirty-third session.[10] That session of the Working Group was held in Vienna from 6 to 17 December 1999.

188. At its thirty-third session, in 2000, the Commission noted the recommendation that the

Working Group had made in its report (A/CN.9/469, para. 140) and gave the Working Group the mandate to prepare a comprehensive statement of key objectives and core features for a strong insolvency, debtor-creditor regime, including consideration of out-of-court restructuring, and a legislative guide containing flexible approaches to the implementation of such objectives and features, including a discussion of the alternative approaches possible and the perceived benefits and detriments of such approaches.

189. It was agreed that, in carrying out its task, the Working Group should be mindful of the work under way or already completed by other organizations, including the World Bank, the International Monetary Fund, the Asian Development Bank, the International Federation of Insolvency Professionals (INSOL) and Committee J of the Section on Business Law of the International Bar Association (IBA). In order to obtain the views and benefit from the expertise of those organizations, the secretariat, in cooperation with INSOL and IBA, organized the UNCITRAL/INSOL/IBA Global Insolvency Colloquium at Vienna, from 4 to 6 December 2000.[11]

190. At its thirty-fourth session, in 2001, the Commission had before it the report of the Colloquium (A/CN.9/495). The Commission took note of the report with satisfaction and commended the work accomplished so far, in particular the holding of the Global Insolvency Colloquium and the efforts of coordination with the work carried out by other international organizations in the area of insolvency law. The Commission discussed the recommendations of the Colloquium, in particular with respect to the form that the future work might take and the interpretation of the mandate given to the Working Group by the Commission at its thirty-third session.

191. The Commission confirmed that the mandate should be widely interpreted to ensure an appropriately flexible work product, which should take the form of a legislative guide. In order to avoid the legislative guide being too general or too abstract to provide the required guidance, the Commission suggested that the Working Group should bear in mind the need to be as specific as possible in developing its work. To that end, model legislative provisions, even if only addressing some of the issues to be included in the guide, should be included as far as possible.[12]

192. At its current session, the Commission noted with appreciation the reports of the Working Group on the work of its twenty-fourth (A/CN.9/504), twenty-fifth (A/CN.9/507) and twenty-sixth sessions (A/CN.9/511). The Commission commended the Working Group for the progress accomplished so far in developing the legislative guide and stressed the importance of continued cooperation with intergovernmental and non-governmental organizations having expertise and interest in insolvency law.

193. With respect to the treatment of security interests in insolvency proceedings, the Commission emphasized the need for a consistent approach by Working Groups V (Insolvency Law) and VI (Security Interests). In that connection, the Commission noted with satisfaction that the Working Groups had already coordinated their work and had agreed on principles for treating issues of common concern (see A/CN.9/511, paras. 126-127 and A/CN.9/512, para. 88). The Commission stressed the need for continued coordination and requested the secretariat to consider organizing a joint session of the two Working Groups in December 2002.

194. The Commission also noted that, at its twenty-sixth session, the Working Group had discussed the likely timing for the completion of its work and had considered that it would be in a better position to make a recommendation to the Commission after its twenty-seventh session (Vienna, 9-13 December 2002) when it would have the opportunity to review a further draft of the legislative guide. The Commission requested the Working Group to continue the preparation of the legislative guide and to consider its position with respect to completion of its work at its twenty-seventh session.

Judicial colloquiums

195. The Commission also noted the report of the 4th Multinational Judicial Colloquium on Cross-Border Insolvency (London, 16 and 17 July 2001) that the secretariat and INSOL had jointly organized (A/CN.9/518). It was noted that over 60 judges and government officials from 29 States had attended the Colloquium. It was also noted that the Colloquium had considered the progress of adoption of the UNCITRAL Model Law on Cross-Border Insolvency by States and the application of legislation enacting the Model Law

to cross-border insolvency issues, as well as aspects of judicial training and education. In addition, it was noted that the Colloquium had provided an opportunity for judges to further their understanding of the various national approaches to cross-border insolvency issues.

196. The Commission further noted that participants in the Colloquium had generally recognized the need for continued judicial education and training to ensure proper and efficient functioning not only of the regime for cross-border insolvency issues, but also for insolvency laws in general. It was suggested that training and education programmes should be based upon an assessment of needs that would enable the programmes and their delivery to be tailored to the requirements (legal, social and cultural) of the local jurisdiction and be compatible with its budget, the caseload demands of judges and the availability of international assistance, including both financial and human resources.

197. The Commission expressed its satisfaction to the secretariat for organizing that Multinational Judicial Colloquium and requested the secretariat to continue cooperating actively with INSOL and other organizations with a view to organizing further such colloquiums in the future, to the extent its resources so permitted. The Commission also agreed that the participation of judges from developing countries was particularly important and requested the secretariat to explore ways of facilitating their participation in future colloquiums, as well as organizing regional or national colloquiums, in cooperation with organizations that might be able to cover expenses of participating judges from developing countries. The Commission also expressed the hope that Governments would reserve funds necessary for delegating judges to such events in view of the potential benefits that would result therefrom in terms of enhanced knowledge and improved court practices in insolvency matters.

VI. Security interests

198. At its thirty-third session in 2000, the Commission considered a report of the Secretary-General on possible future work in the area of secured credit law (A/CN.9/475). At that session, the Commission agreed that security interests was an important subject and had been brought to the attention of the Commission at the right time, in particular in view of the close link of security interests with the work of the Commission on insolvency law. It was widely felt that modern secured credit laws could have a significant impact on the availability and the cost of credit and thus on international trade. It was also widely felt that modern secured credit laws could alleviate the inequalities in the access to lower-cost credit between parties in developed countries and parties in developing countries, and in the share such parties had in the benefits of international trade. A note of caution was struck, however, in that regard to the effect that such laws needed to strike an appropriate balance in the treatment of privileged, secured and unsecured creditors so as to become acceptable to States. It was also stated that, in view of the divergent policies of States, a flexible approach aimed at the preparation of a set of principles with a guide, rather than a model law, would be advisable. Furthermore, in order to ensure the optimal benefits from law reform, including financial-crisis prevention, poverty reduction and facilitation of debt financing as an engine for economic growth, any effort on security interests would need to be coordinated with efforts on insolvency law.[13]

199. At its thirty-fourth session in 2001, the Commission considered a note by the secretariat on security interests (A/CN.9/496). At that session, the Commission agreed that work should be undertaken in view of the beneficial economic impact of a modern secured credit law. It was stated that experience had shown that deficiencies in that area could have major negative effects on a country's economic and financial system. It was also stated that an effective and predictable legal framework had both short- and long-term macroeconomic benefits. In the short term, namely when countries faced crises in their financial sector, an effective and predictable legal framework was necessary, in particular in terms of enforcement of financial claims, to assist the banks and other financial institutions in controlling the deterioration of their claims through quick enforcement mechanisms and to facilitate corporate restructuring by providing a vehicle that would create incentives for interim financing. In the longer term, a flexible and effective legal framework for security interests could serve as a useful tool to increase economic growth. Indeed, without access to affordable credit, economic growth, competitiveness and international trade could not be

fostered, with enterprises being prevented from expanding to meet their full potential.[14]

200. While some concerns were expressed with respect to the feasibility of work in the field of secured credit law, the Commission noted that those concerns were not widely shared and went on to consider the scope of work.[15] It was widely felt that work should focus on security interests in goods involved in a commercial activity, including inventory. It was also agreed that securities and intellectual property should not be dealt with.[16] As to the form of work, the Commission considered that a model law might be too rigid and noted the suggestions made for a set of principles with a legislative guide that would include, where feasible, model legislative provisions.[17] After discussion, the Commission decided to entrust a working group with the task of developing an efficient legal regime for security interests in goods involved in a commercial activity, including inventory. Emphasizing the importance of the matter and the need to consult with representatives of the relevant industry, the Commission recommended that a two- to three-day colloquium be held.[18] The colloquium was held in Vienna from 20 to 22 March 2002. The report of the colloquium is contained in document A/CN.9/WG.VI/WP.3.

201. At its current session, the Commission had before it the report of Working Group VI (Security Interests) on the work of its first session (A/CN.9/512). The Commission commended the secretariat for having prepared a first, preliminary draft of a legislative guide on secured transactions (A/CN.9/WG.VI/WP.2 and addenda 1 through 12), for having organized, in cooperation with the Commercial Finance Association, an international colloquium on secured transactions at Vienna from 20 to 22 March 2002, and for having prepared the report on the colloquium (A/CN.9/WG.VI/WP.3).

202. At the outset, the Commission expressed its appreciation to the Working Group for the progress made in its work and in particular for having considered chapters I through V and X of the draft Guide. It was widely felt that, with that legislative guide, the Commission had a great opportunity to assist States in adopting modern secured transactions legislation, which was generally thought to be a necessary, albeit not sufficient in itself, condition for increasing access to low-cost credit, thus facilitating the cross-border movement of goods and services, economic development and ultimately friendly relations among nations. In that connection, the Commission noted with satisfaction that the project had attracted the attention of international, governmental and non-governmental organizations and that some of those took an active part in the deliberations of the Working Group. The comments submitted to Working Group VI in particular by the European Bank for Reconstruction and Development (A/CN.9/WG.VI/WP.4) were mentioned as an indication of that interest.

203. In addition, the feeling was widely shared that the timing of the Commission's initiative was most opportune both in view of the relevant legislative initiatives under way at the national and the international level and in view of the Commission's own initiative in the field of insolvency law. In that connection, the Commission noted with particular satisfaction the efforts undertaken by Working Group VI and Working Group V (Insolvency Law) towards coordinating their work on a subject of common interest such as the treatment of security interests in the case of insolvency proceedings. Strong support was expressed for such coordination, which was generally thought to be of crucial importance for providing States with comprehensive and consistent guidance with respect to the treatment of security interests in insolvency proceedings. The Commission endorsed a suggestion made to revise chapter X of the draft legislative guide on secured transactions in light of the core principles agreed by Working Groups V and VI (see A/CN.9/511, paras. 126-127 and A/CN.9/512, para. 88). The Commission stressed the need for continued coordination and requested the secretariat to consider organizing a joint session of the two Working Groups in December 2002.

204. After discussion, the Commission confirmed the mandate given to the Working Group at its thirty-fourth session to develop an efficient legal regime for security interests in goods, including inventory.[19] The Commission also confirmed that the mandate of the Working Group should be interpreted widely to ensure an appropriately flexible work product, which should take the form of a legislative guide.

VII. Electronic commerce

205. At its thirty-fourth session, in 2001, the Commission endorsed a set of recommendations for future work that had been made by the Working Group on Electronic Commerce at its thirty-eighth session (New York, 12-23 March 2001).[20] They included the preparation of an international instrument dealing with selected issues on electronic contracting and consideration of three other topics, namely: (a) a comprehensive survey of possible legal barriers to the development of electronic commerce in international instruments; (b) a further study of the issues related to transfer of rights, in particular rights in tangible goods, by electronic means and mechanisms for publicizing and keeping a record of acts of transfer or the creation of security interests in such goods; and (c) a study discussing the UNCITRAL Model Law on International Commercial Arbitration, as well as the UNCITRAL Arbitration Rules, to assess their appropriateness for meeting the specific needs of online arbitration (see A/CN.9/484, para. 134).

206. At its current session, the Commission took note of the report of the Working Group on the work of its thirty-ninth session (A/CN.9/509), which was held in New York, from 11 to 15 March 2002. The Commission noted with appreciation that the Working Group had started its consideration of a possible international instrument dealing with selected issues on electronic contracting. The Commission reaffirmed its belief that an international instrument dealing with certain issues of electronic contracting might be a useful contribution to facilitate the use of modern means of communication in cross-border commercial transactions. The Commission commended the Working Group for the progress made in that regard. However, the Commission also took note of the varying views that were expressed within the Working Group concerning the form and scope of the instrument, its underlying principles and some of its main features. The Commission noted, in particular, the proposal that the Working Group's considerations should not be limited to electronic contracts, but should apply to commercial contracts in general, irrespective of the means used in their negotiation. The Commission was of the view that member and observer States participating in the Working Group's deliberations should have ample time for consultations on those important issues. For that purpose, the Commission considered that it might be preferable for the Working Group to postpone its discussions on a possible international instrument dealing with selected issues on electronic contracting until its forty-first session, in 2003.

207. The Commission took note of the progress made thus far by the secretariat in connection with a survey of possible legal barriers to the development of electronic commerce in international trade-related instruments. The Commission reiterated its belief concerning the importance of that project and its support for the efforts of the Working Group and the secretariat in that respect. The Commission requested the Working Group to devote most of its time at its fortieth session, in October 2002, to a substantive discussion of various issues relating to legal barriers to electronic commerce that had been raised in the secretariat's initial survey (A/CN.9/WG.IV/WP.94).

208. The Commission was informed, in that connection, that the secretariat had invited member and observer States to submit written comments on that project and requested international organizations, including organizations of the United Nations system and other intergovernmental organizations, to offer their views to the secretariat as to whether there were international trade instruments in respect of which those organizations or their member States acted as depositaries that those organizations would wish to be included in the survey. The Commission invited member and observer States, as well as international intergovernmental and interested non-governmental organizations, to submit their comments to the secretariat at their earliest convenience. The views of member and observer States, as well as the comments from other international organizations were said to be particularly important to ensure that the survey being conducted by the secretariat would reflect trade-related instruments emanating from the various geographical regions represented on the Commission.

209. The Commission affirmed its understanding that all topics referred to in paragraph 1 should remain under consideration by the Working Group as items of its short- and medium-term work programmes. As had already been indicated at the Commission's thirty-third session, the work to be carried out by the Working Group could involve consideration of several topics in parallel as well as preliminary discussion of the contents of possible uniform rules on certain aspects of

the above-mentioned topics.[21] With respect to the issues of online dispute resolution (ODR), the Commission received information on the work under way or currently being considered in other international organizations. The Commission requested the secretariat to continue monitoring closely such activities, with a view to developing suggestions, when appropriate, for future work by UNCITRAL in the field of ODR.

VIII. Transport law

210. At its twenty-ninth session, in 1996,[22] the Commission considered a proposal to include in its work programme a review of current practices and laws in the area of the international carriage of goods by sea, with a view to establishing the need for uniform rules where no such rules existed and with a view to achieving greater uniformity of laws.[23]

211. At that session, the Commission had been informed that existing national laws and international conventions had left significant gaps regarding various issues. Those gaps constituted an obstacle to the free flow of goods and increased the cost of transactions. The growing use of electronic means of communication on the carriage of goods further aggravated the consequences of those fragmentary and disparate laws and also created the need for uniform provisions addressing the issues particular to the use of new technologies.[23]

212. At that session, the Commission also decided that the secretariat should gather information, ideas and opinions as to the problems that arose in practice and possible solutions to those problems, so as to be able to present at a later stage a report to the Commission. It was agreed that such information-gathering should be broadly based and should include, in addition to Governments, the international organizations representing the commercial sectors involved in the carriage of goods by sea, such as the International Maritime Committee (CMI), the International Chamber of Commerce (ICC), the International Union of Marine Insurance (IUMI), the International Federation of Freight Forwarders Associations (FIATA), the International Chamber of Shipping (ICS) and the International Association of Ports and Harbors.[24]

213. At its thirty-first session, in 1998, the Commission heard a statement on behalf of CMI to the effect that it welcomed the invitation to cooperate with the secretariat in soliciting views of the sectors involved in the international carriage of goods and in preparing an analysis of that information.[25]

214. At the thirty-second session of the Commission, in 1999, it was reported on behalf of CMI that a CMI working group had been instructed to prepare a study on a broad range of issues in international transport law with the aim of identifying the areas where unification or harmonization was needed by the industries involved.[26]

215. At that session, it was also reported that the CMI working group had sent a questionnaire to all CMI member organizations covering a large number of legal systems. The intention of CMI was, once the replies to the questionnaire had been received, to create an international subcommittee to analyse the data and find a basis for further work towards harmonizing the law in the area of international transport of goods. The Commission had been assured that CMI would provide it with assistance in preparing a universally acceptable harmonizing instrument.[27]

216. At its thirty-third session, in 2000, the Commission had before it a report of the Secretary-General on possible future work in transport law (A/CN.9/476), which described the progress of the work carried out by CMI in cooperation with the secretariat. It also heard an oral report on behalf of CMI that the CMI working group had, in cooperation with the secretariat, launched an investigation based on the questionnaire. It was also noted that, at the same time, a number of round-table meetings had been held in order to discuss features of the future work with international organizations representing various industries. Those meetings showed the continued support for and interest of the industry in the project.

217. In conjunction with the thirty-third session of the Commission in 2000, a transport law colloquium, organized jointly by the secretariat and CMI, was held in New York on 6 July 2000. The purpose of the colloquium was to gather ideas and expert opinions on problems that arose in the international carriage of goods, in particular the carriage of goods by sea, identifying issues in transport law on which the Commission might wish to consider undertaking future work and, to the extent possible, suggesting possible

solutions. On the occasion of that colloquium, a majority of speakers acknowledged that existing national laws and international conventions left significant gaps regarding issues such as the functioning of a bill of lading and a seaway bill, the relationship of those transport documents to the rights and obligations between the seller and the buyer of the goods and the legal position of the entities that provided financing to a party to a contract of carriage. There was general consensus that, with the changes wrought by the development of multimodalism and the use of electronic commerce, the transport law regime was in need of reform to regulate all transport contracts, whether applying to one or more modes of transport and whether the contract was made electronically or in writing.

218. At its thirty-fourth session, in 2001, the Commission had before it a report of the Secretary-General (A/CN.9/497) that had been prepared pursuant to the request by the Commission. That report summarized the considerations and suggestions that had resulted so far from the discussions in the CMI International Subcommittee. The purpose of the report was to enable the Commission to assess the thrust and scope of possible solutions and decide how it wished to proceed. The issues described in the report that would have to be dealt with in the future instrument included the following: the scope of application of the instrument, the period of responsibility of the carrier, the obligations of the carrier, the liability of the carrier, the obligations of the shipper, transport documents, freight, delivery to the consignee, right of control of parties interested in the cargo during carriage, transfer of rights in goods, the party that had the right to bring an action against the carrier and time bar for actions against the carrier.

219. The report suggested that consultations conducted by the secretariat pursuant to the mandate it received from the Commission in 1996 indicated that work could usefully commence towards an international instrument, possibly having the nature of an international treaty, that would modernize the law of carriage, take into account the latest developments in technology, including electronic commerce, and eliminate legal difficulties in the international transport of goods by sea that were identified by the Commission.

220. At its thirty-fourth session, the Commission decided to entrust the project to the Working Group on Transport Law.[28]

221. As to the scope of the work, the Commission, after some discussion, decided that the working document to be presented to the Working Group should include issues of liability. The Commission also decided that the considerations in the Working Group should initially cover port-to-port transport operations; however, the Working Group would be free to study the desirability and feasibility of dealing also with door-to-door transport operations, or certain aspects of those operations, and, depending on the results of those studies, recommend to the Commission an appropriate extension of the Working Group's mandate. It was stated that solutions embraced in the United Nations Convention on the Liability of Transport Terminals in International Trade (Vienna, 1991) should also be carefully taken into account. It was also agreed that the work would be carried out in close cooperation with interested intergovernmental organizations involved in work on transport law (such as the United Nations Conference on Trade and Development, the Economic Commission for Europe (ECE) and other regional commissions of the United Nations, and the Organization of American States (OAS), as well as international non-governmental organizations.[28]

222. At its current session, the Commission had before it the report of the ninth session of the Working Group on Transport Law held in New York from 15 to 26 April 2002 at which the consideration of the project commenced (A/CN.9/510). At that session, the Working Group undertook a preliminary review of the provisions of the draft instrument on transport law contained in the annex to the note by the secretariat (A/CN.9/WG.III/WP.21). The Working Group had before it also the comments prepared by ECE and UNCTAD, which were reproduced in annexes to the note by the secretariat (A/CN.9/WG.III/WP.21/Add.1). Due to the absence of sufficient time, the Working Group did not complete its consideration of the draft instrument, which was left for finalization at its tenth session. The Commission noted that the secretariat had been requested to prepare revised provisions of the draft instrument based on the deliberations and decisions of the Working Group (A/CN.9/510, para. 21). The Commission expressed appreciation for the work that had already been accomplished by the Working Group.

223. The Commission noted that the Working Group, conscious of the mandate given to it by the Commission (A/56/17, para. 345) (and in particular of the fact that the Commission had decided that the considerations in the Working Group should initially cover port-to-port transport operations, but that the Working Group would be free to consider the desirability and feasibility of dealing also with door-to-door transport operations, or certain aspects of those operations), had adopted the view that it would be desirable to include within its discussions also door-to-door operations and to deal with those operations by developing a regime that resolved any conflict between the draft instrument and provisions governing land carriage in cases where sea carriage was complemented by one or more land carriage segments (for considerations of the Working Group on the issue of the scope of the draft instrument, see A/CN.9/510, paras. 26-32). It was also noted that the Working Group considered that it would be useful for it to continue its discussions of the draft instrument under the provisional working assumption that it would cover door-to-door transport operations. Consequently, the Working Group had requested the Commission to approve that approach (A/CN.9/510, para. 32).

224. With respect to the scope of the draft instrument, strong support was expressed by a number of delegations in favour of the working assumption that the scope of the draft instrument should extend to door-to-door transport operations. It was pointed out that harmonizing the legal regime governing door-to-door transport was a practical necessity, in view of the large and growing number of practical situations where transport (in particular transport of containerized goods) was operated under door-to-door contracts. While no objection was raised against such an extended scope of the draft instrument, it was generally agreed that, for continuation of its deliberations, the Working Group should seek participation from international organizations such as the International Road Transport Union (IRU), the Intergovernmental Organisation for International Carriage by Rail (OTIF), and other international organizations involved in land transportation. The Working Group was invited to consider the dangers of extending the rules governing maritime transport to land transportation and to take into account, in developing the draft instrument, the specific needs of land carriage. The Commission also invited member and observer States to include land transport experts in the delegations that participated in the deliberations of the Working Group. The Commission further invited Working Groups III (Transport Law) and IV (Electronic Commerce) to coordinate their work in respect of dematerialized transport documentation. While it was generally agreed that the draft instrument should provide appropriate mechanisms to avoid possible conflicts between the draft instrument and other multilateral instruments (in particular those instruments that contained mandatory rules applicable to land transport), the view was expressed that avoiding such conflicts would not be sufficient to guarantee the broad acceptability of the draft instrument unless the substantive provisions of the draft instrument established acceptable rules for both maritime and land transport. The Working Group was invited to explore the possibility of the draft instrument providing separate yet interoperable sets of rules (some of which might be optional in nature) for maritime and road transport. After discussion, the Commission approved the working assumption that the draft instrument should cover door-to-door transport operations, subject to further consideration of the scope of application of the draft instrument after the Working Group had considered the substantive provisions of the draft instrument and come to a more complete understanding of their functioning in a door-to-door context.

IX. Privately financed infrastructure projects

225. At its thirty-third session, in 2000, the Commission adopted the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, consisting of the legislative recommendations (A/CN.9/471/Add.9), with the amendments adopted by the Commission at that session and the notes to the legislative recommendations (A/CN.9/471/Add.1-8), which the secretariat was authorized to finalize in the light of the deliberations of the Commission.[29] The Legislative Guide was published in all official languages in 2001.

226. At the same session, the Commission also considered a proposal for future work in that area. It was suggested that, although the Legislative Guide would be a useful reference for domestic legislators in establishing a legal framework favourable to private

investment in public infrastructure, it would be nevertheless desirable for the Commission to formulate more concrete guidance in the form of model legislative provisions or even in the form of a model law dealing with specific issues.[30]

227. After consideration of that proposal, the Commission decided that the question of the desirability and feasibility of preparing a model law or model legislative provisions on selected issues covered by the Legislative Guide should be considered by the Commission at its thirty-fourth session in 2001. In order to assist the Commission in making an informed decision on the matter, the secretariat was requested to organize a colloquium, in cooperation with other interested international organizations or international financial institutions, to disseminate knowledge about the Legislative Guide.[31]

228. A Colloquium under the title "Privately Financed Infrastructure: Legal Framework and Technical Assistance" was organized with the co-sponsorship and organizational assistance of the Public-Private Infrastructure Advisory Facility (PPIAF), a multi-donor technical assistance facility aimed at helping developing countries improve the quality of their infrastructure through private sector involvement. It was held from 2 to 4 July 2001 in Vienna, during the second week of the thirty-fourth session of the Commission.

229. At its thirty-fourth session, in 2001, the Commission took note with appreciation of the results of the Colloquium as summarized in a note by the secretariat (A/CN.9/488). The Commission expressed its gratitude to PPIAF for its financial and organizational support, and to the various international intergovernmental and non-governmental organizations represented and to the speakers who participated at the Colloquium.

230. At that session, the Commission considered the desirability and feasibility of further work of the Commission in the field of privately financed infrastructure projects.[32] After discussion, the Commission agreed that a working group should be entrusted with the task of drafting core model legislative provisions in the field of privately financed infrastructure projects. The Commission was of the view that, if further work in the field of privately financed infrastructure projects was to be accomplished within a reasonable time, it was essential to carve out a specific area from among the many issues dealt with in the Legislative Guide. Accordingly, it was agreed that the first session of such a working group should identify the specific issues on which model legislative provisions, possibly to become an addendum to the Legislative Guide, could be formulated.[33]

231. The Working Group, named Working Group I (Privately Financed Infrastructure Projects), held its fourth session (the first devoted to that item), in Vienna from 24 to 28 September 2001. The Working Group decided to use the legislative recommendations contained in the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects as a basis for its deliberations.

232. In accordance with a suggestion that had been made at the Colloquium (A/CN.9/488, para. 19), the Working Group was invited to devote its attention to a specific phase of infrastructure projects, namely the selection of the concessionaire, with a view to formulating specific drafting proposals for legislative provisions. Nevertheless, the Working Group was of the view that model legislative provisions on various other topics might be desirable (see A/CN.9/505, paras. 18-174). The Working Group requested the secretariat to prepare draft model legislative provisions in the field of privately financed infrastructure projects, based on those deliberations and decisions, to be presented to the fifth session of the Working Group for review and further discussion.

233. At its current session, the Commission noted with appreciation the report of the Working Group on the work of its fourth session (A/CN.9/505). The Commission commended the Working Group and the secretariat for the progress accomplished so far in developing a set of draft model legislative provisions for the legislative guide. The Commission requested the Working Group to review the draft model legislative provisions with a view to completing its work at its fifth session. It was stated that early finalization of the draft model legislative provisions by the Working Group would facilitate timely distribution of the draft model legislative provisions to States and organizations for comments and their consideration for adoption by the Commission, as an addendum to the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, at its thirty-sixth session in 2003.

X. Monitoring implementation of the 1958 New York Convention

234. It was noted that the Commission, at its twenty-eighth session, in 1995, had approved the project, undertaken jointly with Committee D of IBA, aimed at monitoring the legislative implementation of the New York Convention.[34] It was also noted that the purpose of the project, as approved by the Commission, was limited to that aim and, in particular, that its purpose was not to monitor individual court decisions applying the Convention. Moreover, it was noted that, as at the beginning of the current session of the Commission, the secretariat had received 61 replies to the questionnaire sent to the States parties to the Convention (of a current total of 130 States parties) relating to the legal regime in those States governing the recognition and enforcement of foreign awards.

235. The Commission urged the secretariat to intensify its efforts to obtain information necessary for preparing the report and for that purpose to recirculate the questionnaire to the States parties to the Convention that had not yet replied to the questionnaire requesting them to reply as soon as possible or, to the extent necessary, to inform the secretariat about any new developments since their previous replies to the questionnaire. The secretariat was also urged to obtain information from other sources, in particular intergovernmental and non-governmental organizations. After discussion, the secretariat was requested to prepare, for a future session of the Commission, a note presenting the findings based on the analysis of the information gathered, which could be updated.

236. In the discussion of the importance of the project, the Commission's attention was drawn to the example of the cotton industry. As noted in a recent letter to the secretariat from the International Cotton Advisory Committee (ICAC, an intergovernmental organization of States having an interest in the production, export, import and consumption of cotton), in 2001 about two thirds of all arbitral awards issued in conjunction with international trade in cotton were ignored by the party at fault and that that fact undermined confidence in the cotton trading system and imposed costs throughout the cotton chain. It was widely felt that non-compliance with arbitral awards was a serious matter that required immediate attention since it could undermine the efficiency of arbitration and the reliability of contracts, which could seriously disrupt international trade. In that connection, it was emphasized that there was a need for increased efforts by the Commission in the field of training and assistance and that judicial colloquiums could usefully be held in order to foster an exchange of views among judges as to the interpretation and the application of the Convention. It was noted that additional secretariat resources could be devoted to that effort only if the secretariat of the Commission were strengthened (for the continuation of the discussion on the issue of the strengthening of the secretariat of the Commission, see paras. 258-271, below).

XI. Enlargement of the membership of the Commission

237. The Commission took note of General Assembly decision 56/422 of 12 December 2001 by which the General Assembly, on the recommendation of the Sixth Committee and after having considered a report by the Secretary-General (A/56/315), decided to defer consideration of and decision on the enlargement of the membership of the Commission to its fifty-seventh session under the item entitled "Report of the United Nations Commission on International Trade Law on the work of its thirty-fifth session".

238. It was generally agreed that the membership of the Commission should be enlarged as soon as possible. Recalling a similar discussion held at its thirty-fourth session,[35] the Commission generally felt that such an enlargement of the Commission would ensure that the Commission remained representative of all legal traditions and economic systems, in particular in view of the substantial increase in the membership of the Organization. In addition, it was observed that an enlargement of the Commission would assist the Commission in better implementing its mandate by drawing on a pool of experts from an increased number of countries and by enhancing the acceptability of its texts. It was also stated that such an enlargement would adequately reflect the increased importance of international trade law for economic development and the preservation of peace and stability. Moreover, it was said that such an enlargement of the Commission would foster participation of those States that could not justify the human and other resources necessary for the

preparation and attendance of the meetings of the Commission and its working groups unless they were members. It was also stated that an enlargement would facilitate coordination with the work of other organizations active in the unification of private law to the extent that the overlap between the membership of the Commission and the membership of those organizations would be increased. It was also observed that an enlargement of the Commission would not affect its efficiency or its working methods and, in particular, the participation as observers of non-member States and international organizations, whether governmental or non-governmental, active in the field of international trade law or the principle of reaching decisions by consensus without a formal vote.

239. As to the size of the enlargement, some preference was expressed for 60 member States, while reference was made also to 72 member States. As to the distribution of seats among geographic groups, divergent views were expressed. Views were expressed that the distribution of the membership to each regional group was to be considered upon the basis of equal and fair treatment in order to avoid any underrepresentation referring to the underlying principles of equal representation behind the Charter of the United Nations, article II, paragraph 1. However, views were also expressed that the current proportion among regional groups should be maintained. After discussion, it was agreed that both matters should be left to the Sixth Committee.

XII. Case law on UNCITRAL texts

A. Case law

240. The Commission noted with appreciation the ongoing work under the system that had been established for the collection and dissemination of case law on UNCITRAL texts (CLOUT), consisting of the preparation of case abstracts, compilation of full texts of decisions, and the preparation of research aids and analytic tools such as thesauri and indices. It was observed that, as of the date of the present Commission session, 36 issues of CLOUT had been published, dealing with 420 cases. It was noted that CLOUT represented an important aspect of the overall training and technical assistance information activities undertaken by UNCITRAL. In that regard, it was observed that the wide distribution of CLOUT in both print and electronic formats (see http://www.uncitral.org under "CLOUT") promoted the uniform interpretation and application of UNCITRAL texts by enabling interested persons, such as judges, arbitrators, lawyers or parties to commercial transactions to take into account decisions and awards of other jurisdictions when rendering their own judgements or opinions or adjusting their actions to the prevailing interpretation of those texts.

241. The Commission expressed appreciation to the national correspondents for their work in the collection of relevant decisions and arbitral awards and their preparation of case abstracts. It also expressed its appreciation for compiling, editing, issuing and distributing case abstracts, as well as for the preparation of a new, web-enhanced Thesaurus on the Model Arbitration Law, which was finalized after distribution to national corespondents for their comments.

242. The Commission noted that at present CLOUT predominately contained cases interpreting the Convention on the International Sale of Goods and the Model Arbitration Law. It was agreed that an effort should be made to extend the scope of materials contained within CLOUT to include cases and arbitral decisions interpreting other UNCITRAL texts as well, such as inter alia the Model Law on Electronic Commerce, the Hamburg Rules, and the Model Procurement Law.

B. Digest of case law on the United Nations Sales Convention

243. The Commission recalled that, at its thirty-fourth session, it had requested the secretariat to prepare, in cooperation with experts and national correspondents, a text in the form of an analytical digest of court and arbitral decisions identifying trends in the interpretation of the United Nations Convention on Contracts for the International Sale of Goods. It was noted that the drafting process was under way and that it was anticipated that a draft text would be circulated to national correspondents and finalized by the secretariat in light of comments received. It was also noted that the secretariat was working with the assistance of experts and national correspondents to collect cases, evaluate their significance and prepare

initial drafts. The Commission expressed its appreciation to the experts and national correspondents for their efforts in the preparation of the initial draft chapters of the digest on the Convention. In view of the importance of international commercial arbitration and the relevance of the UNCITRAL Model Law on International Commercial Arbitration in that context, the Commission requested the secretariat to prepare a similar digest of case law on the Model Law. The Commission also considered that the secretariat should explore the feasibility of preparing such a digest on the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

XIII. Training and technical assistance

244. The Commission had before it a note by the secretariat (A/CN.9/515) setting forth the activities undertaken since its thirty-fourth session and indicating the direction of future activities being planned, in particular in view of the increase in the requests received by the secretariat. It was noted that training and technical assistance activities were typically carried out through seminars and briefing missions, which were designed to explain the salient features of UNCITRAL texts and the benefits to be derived from their adoption by States. It was also noted that such seminars and briefing missions were often followed by assistance in the drafting or finalizing of legislation based on an UNCITRAL text.

245. It was reported that, since the previous session, the following seminars and briefing missions had been organized: Vilnius (11-13 June 2001); Ouagadougou (18-22 June 2001); Santo Domingo (20-21 June 2001); Nairobi (10-13 September 2001); Minsk (26-28 September 2001); Kiev (2-4 October 2001); Dubrovnik, Croatia (1-5 October 2001); Lima (15-16 October 2001); Arequipa, Peru (18-19 October 2001); Bogota (25-26 October 2001); Hanoi (6-12 December 2001); Phnom Penh (3-5 April 2002); and Jakarta (8-10 April 2002). Members of the secretariat participated as speakers in a number of meetings convened by other organizations. The secretariat of the Commission reported that a number of requests had had to be turned down for lack of sufficient resources and that for the remainder of 2002 only some of the requests made by countries in Africa, Asia, Latin America and Eastern Europe could be met.

246. The Commission expressed its appreciation to the secretariat for the activities undertaken since its previous session and emphasized the importance of the training and technical assistance programme for the unification and harmonization efforts that were at the heart of the Commission's mandate. It was widely felt that training and technical assistance were particularly useful for developing countries and countries with economies in transition lacking expertise in the areas of trade and commercial law covered by the work of UNCITRAL. It was also stated that the training and technical assistance activities of the secretariat could play an important role in the economic integration efforts being undertaken by many countries.

247. The Commission noted the various forms of technical assistance that might be provided to States preparing legislation based on UNCITRAL texts, such as review of preparatory drafts of legislation from the point of view of UNCITRAL texts, preparation of regulations implementing such legislation and comments on reports of law reform commissions, as well as briefings for legislators, judges, arbitrators, procurement officials and other users of UNCITRAL texts as embodied in national legislation. The Commission agreed that the upsurge in commercial law reform represented a crucial opportunity for the Commission to further significantly its objectives, as envisaged by the General Assembly in its resolution 2205 (XXI) of 17 December 1966. It was also widely felt that, with its balanced work over the last thirty-five years aimed at facilitating the development of international trade in a globalized economy on the basis of equality and mutual benefit, the Commission could make a unique contribution towards the goal of spreading the benefits of globalization to all States in a balanced and fair way.

248. The Commission took note with appreciation of the contributions made by Cyprus, France, Greece and Switzerland towards the training and technical assistance programme. It also expressed its appreciation to Austria, Cambodia, Cyprus, Kenya, Mexico and Singapore for their contributions to the Trust Fund for Granting Travel Assistance to Developing States members of UNCITRAL since its establishment. The Commission furthermore expressed its appreciation to those other States and organizations that had contributed to its programme of training and assistance by providing funds or staff or by hosting seminars.

249. Stressing the importance of extrabudgetary funding for carrying out training and technical assistance activities, the Commission appealed once again to all States, international organizations and other interested entities to consider making contributions to the UNCITRAL trust funds so as to enable the secretariat of the Commission to meet the increasing demands in developing countries and newly independent States for training and assistance and to enable delegates from developing countries to attend UNCITRAL meetings. It was also suggested that the secretariat should make efforts to actively seek contributions from donor countries and organizations, for instance by formulating concrete proposals for projects to support its training and technical assistance activities.

250. In view of the limited resources available to the secretariat of the Commission, whether from budgetary or extrabudgetary resources, strong concern was expressed that the Commission could not fully implement its mandate with regard to training and technical assistance. Concern was also expressed that, without effective cooperation and coordination between the secretariat and development assistance agencies providing or financing technical assistance, international assistance might lead to the adoption of national laws that did not represent internationally agreed standards, including UNCITRAL conventions and model laws.

251. The Commission noted with appreciation the initial steps taken in the direction of implementation of a request of the General Assembly made last year for the Secretary-General to increase substantially both the human and the financial resources available to its secretariat. However, the Commission also noted that those efforts had not been completed yet and that two members of its secretariat who had left since its last session had not been replaced yet. Therefore, in order to ensure the effective implementation of its training and assistance programme and the timely publication and dissemination of its work, the Commission decided to recommend that the General Assembly consider requesting the Secretary-General to intensify and expedite efforts to strengthen the secretariat of the Commission within the bounds of the resources available in the Organization (paras. 258-271, below).

XIV. Status and promotion of UNCITRAL legal texts

252. On the basis of a note by the secretariat (A/CN.9/516), the Commission considered the status of the conventions and model laws emanating from its work, as well as the status of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958). The Commission noted with pleasure the new action of States and jurisdictions subsequent to 13 July 2001 (the date of the conclusion of the thirty-fourth session of the Commission) regarding the following instruments:

(a) Convention on the Limitation Period in the International Sale of Goods, concluded at New York on 14 June 1974, as amended by the Protocol of 11 April 1980. Number of States parties: 17;

(b) [Unamended] Convention on the Limitation Period in the International Sale of Goods (New York, 1974). Number of States parties: 24;

(c) United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules). Number of States parties: 28;

(d) United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980). New actions by Colombia and Israel; number of States parties: 61;

(e) United Nations Convention on International Bills of Exchange and International Promissory Notes (New York, 1988). New action by Honduras. The Convention has three States parties; it requires seven additional actions for entry into force;

(f) United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (Vienna, 1991). The Convention has two States parties; it requires three additional actions for entry into force;

(g) United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 1995). New action by Belarus; number of States parties: 6;

(h) Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958). New actions by Iceland, Iran (Islamic Republic of) and Zambia; number of States parties: 129;

(i) UNCITRAL Model Law on International Commercial Arbitration, 1985. New jurisdiction that has enacted legislation based on the Model Law: Croatia;

(j) UNCITRAL Model Law on International Credit Transfers, 1992;

(k) UNCITRAL Model Law on Procurement of Goods, Construction and Services, 1994. New jurisdictions that have enacted legislation based on the Model Law: Mauritius, Mongolia, Slovakia and United Republic of Tanzania;

(l) UNCITRAL Model Law on Electronic Commerce, 1996. New jurisdictions that have enacted legislation based on the Model Law: Ireland, Philippines, Slovenia and the States of Jersey (Crown Dependency of the United Kingdom of Great Britain and Northern Ireland);

(m) UNCITRAL Model Law on Cross-Border Insolvency, 1997. New jurisdiction that has enacted legislation based on the Model Law: within Yugoslavia, Montenegro.

253. It was also reported that Luxembourg had signed the United Nations Convention on the Assignment of Receivables in International Trade. Appreciation was expressed for those legislative actions on the texts of the Commission. A request was directed to States that had enacted or were about to enact a model law prepared by the Commission, or were considering legislative action regarding a convention resulting from the work of the Commission, to inform the secretariat of the Commission thereof. Such information would be useful to other States in their consideration of similar legislative action. It was suggested that consideration might be given to reporting activities towards legislative action on an UNCITRAL text and legislations influenced by an UNCITRAL text.

254. Representatives and observers of a number of States reported that official action was being considered with a view to adherence to various conventions and to the adoption of legislation based on various model laws prepared by UNCITRAL. The view was also expressed that the Commission work had a general beneficial impact by emphasizing the benefits to be derived from uniform law texts, even before their adoption by States.

255. The Commission generally felt that its efforts towards the unification and harmonization of trade law had a general beneficial impact but could not be complete and produce concrete results unless texts prepared by the Commission were adopted by States and applied in a uniform way. In order to ensure that result, the Commission requested the secretariat to increase its efforts aimed at assisting States in considering texts prepared by the Commission for adoption (see also para. 250, above). The Commission also appealed to States and relevant organizations in the public and the private sector to assist the secretariat in those efforts, for example, by making contributions to the Trust Fund for UNCITRAL Symposia or by joining efforts with the secretariat in their law reform assistance programmes. The Commission also directed an appeal to the representatives and observers who had been participating in the meetings of the Commission and its working groups to contribute, to the extent that they in their discretion deemed appropriate, to facilitating consideration by legislative organs in their countries of texts of the Commission.

XV. General Assembly resolutions on the work of the Commission

256. The Commission took note with appreciation of General Assembly resolutions 56/79 on the report of the Commission on the work of its thirty-fourth session, 56/80 on the UNCITRAL Model Law on Electronic Signatures and the Guide to Enactment of the Model Law and 56/81 on the United Nations Convention on the Assignment of Receivables in International Trade, all of 12 December 2001.

257. The Commission also took note of General Assembly decision 56/422 of 12 December 2001 by which the General Assembly, on the recommendation of the Sixth Committee and having considered a report by the Secretary-General (A/56/315), decided to defer consideration of and decision on the enlargement of the membership of the Commission to its thirty-seventh session under the item entitled "Report of the United Nations Commission on International Trade Law on the work of its thirty-fifth session".

Strengthening of UNCITRAL secretariat

258. The Commission noted that the General Assembly, in its resolution 56/79 of 12 December 2001, paragraph 13, on the report of the Commission on the work of its thirty-fourth session:

> "*Reiterates*, in view of the increased work programme of the Commission, its request to the Secretary-General to strengthen the secretariat of the Commission within the bounds of the resources available in the Organization so as to ensure and enhance the effective implementation of the programme of the Commission."

259. On 9 April 2002, in conformity with General Assembly resolutions 48/218 B of 29 July 1994 and 54/244 of 23 December 1999, the Secretary-General had transmitted a report of the Office of Internal Oversight Services (OIOS) on the in-depth evaluation of legal affairs (E/AC.51/2002/5). That report had been reviewed by the relevant departments and offices. The Secretary-General had taken note of its findings and concurred with its recommendations.

260. In that OIOS report dealing with the Office of Legal Affairs (OLA), the overall assessment of the activities of the International Trade Law Branch, which functioned as the UNCITRAL secretariat, was highly positive. Interviews with members of the Commission, delegates from Member States, non-governmental organizations and other agencies indicated that the quality of the secretariat support was effective, technically competent and timely. Particular mention was made of the Branch's ability to maintain a balanced approach to issues. Yet, the OIOS survey also identified a few areas for improvement, namely in the fields of coordination with other organizations, promotion of uniform application and interpretation of UNCITRAL texts, and technical assistance with trade law reform. Accordingly, the OIOS report included two recommendations for increased coordination with trade law organizations (recommendation 13) and for promotion of wider participation in international trade law conventions and use of model laws (recommendation 14). The Commission noted that measures were being considered to implement those recommendations.

261. With respect to the UNCITRAL expanded programme of work, the OIOS report stated as follows (E/AC.51/2002/5, para. 66):

> "In recent years, UNCITRAL has been considering the implications of increasing its membership. In December 2001, the General Assembly deferred the membership issue for consideration at a later date. There has also been a review of the working methods of the Commission. From the proposals contained in the secretariat's note on working methods, the Commission expressed its preference for increasing the number of working groups by reducing the duration of each working group session from two weeks to one week. *While this will enable the number of working groups to be increased from three to six (within existing conference allocations) and accommodate the demand for work on more topics, it will require increased input from the International Trade Law Branch.* It is anticipated that this will only in part be met by streamlining working methods. Participants and observers of the work of the Commission stated to OIOS that the expansion of the working groups was recognized as an indication of the growing importance of, *and increased demand for uniform trade law standards in a globalized economy*. The limitation of the duration of the groups was also welcomed as it would facilitate attendance. However, doubts were repeatedly expressed as to whether the International Trade Law Branch would be able to maintain the quality and efficiency of its work. Aside from the addition of one Professional post at the P-4 level in 2001, staff resources have remained at the 1968 levels, that is, of 10 Professional and 7 General Service staff. An analysis and reappraisal of the requirements in terms of staff and other support to the expanded working groups appears timely. Given that the issues tackled are of interest to other organizations, the International Trade Law Branch could also consider more strategic efforts to raise funds from partners within and from outside the United Nations, in line with General Assembly resolution 51/161. The Commission decided to review the practical applications of the new working methods at a future session."

262. The corresponding recommendation read as follows:

> "Recommendation 15: UNCITRAL expanded programme of work
>
> "OLA should review the secretariat requirements that an expansion from 3 to 6 UNCITRAL working groups require and present to UNCITRAL, at its upcoming review of the practical applications of the new working methods, different options that would ensure the necessary level of secretariat services (see para. 66 above)."

263. In making that recommendation, OIOS was mindful of its possible financial implications and noted that "OIOS believes that implementation of a number of recommendations, in particular recommendations 4 (a), 4 (b), 7 and 15, may require additional resources for which OLA should prepare a detailed justification for review through the appropriate programme and budget review processes" (E/AC.51/2002/5, para. 82).

264. The follow-up to recommendation 15 of the OIOS report was discussed within OLA. The preliminary conclusion of those internal discussions was that a sustainable solution for ensuring enhanced efficiency in the work of the Commission might not bear fruit, if it was not accompanied by a significant strengthening of the Commission's secretariat. It should be recalled that, as a result of the demands emanating from member States for UNCITRAL to prepare legal standards in an increasing number of areas, the UNCITRAL secretariat was currently fully occupied with at least eight major ongoing projects, which meant that the number of major projects on the agenda of the Commission had more than doubled in the year 2001 as compared with previous years. That meant, in practical terms, that no more than one legal officer was currently available to concentrate on each project, in addition to that legal officer's other duties in connection with research and drafting of documents for various Working Groups and the Commission, and also with activities relating to the coordination of work of organizations active in the preparation of trade law texts, training and assistance, publications and information. Thus, the only workable options were either to reduce drastically the current programme of work of UNCITRAL or to increase significantly the resources of the UNCITRAL secretariat.

265. The Commission noted that a possible reduction in the programme of work of UNCITRAL would appear to run counter to several major objectives of the United Nations. Promoting higher standards of living, social progress and sustainable economic development were among the most important goals of the United Nations. Those goals had become even more pertinent following the Millennium Summit of the United Nations, at which heads of State and Government from the entire world committed themselves to substantially improving living conditions for their citizens through a number of concrete measures set forth in the Millennium Declaration. Economic growth, political modernization, the protection of human rights, and other larger objectives of the United Nations all hinged, at least in part, on "the rule of law". Policy makers in developing countries and countries with economies in transition were thus seeking ways to establish or strengthen the rule of law in their countries. The economic development that resulted from countries modernizing and harmonizing their trade laws paid direct dividends to all segments of a developing country's population. Children's health and education improved along with economic growth as they were no longer needed as a source of manual labour. Women were able to increase their participation in the marketplace. The environment could be protected as farmers and fishermen were given opportunities to develop less destructive practices. Peace and human rights were enhanced as the foundation of stability. In a number of instances, UNCITRAL had made and continued to make a significant contribution to facilitating a number of economic activities that formed the basis of an orderly functioning of the open economy, thus helping developing countries to fully participate in the benefits of the global marketplace. Examples where UNCITRAL should be given credit for its action and where it continued to be indispensable included the following: facilitating the access of small enterprises to international markets through electronic commerce; enhancing the framework for environmentally-sound infrastructure development through proper legislation on privately-financed infrastructure projects; curbing corruption in government contracting through modernization of legislation on government contracting and public procurement; facilitating access to credit, including cross-border credit, to commercial enterprises by elaborating models for legislation on secured transactions; and strengthening the stability of

national economies by preparing models for national insolvency legislation. Those achievements not only illustrated the positive role of UNCITRAL but also called for an increase in its action and certainly *not* for a reduction in its work programme.

266. With respect to the need to promote wider participation in international trade law conventions and use of model laws, the Commission noted that more work was also required, as pointed out by the Secretary-General in his report on the work of the Organization, to establish the rule of law in international affairs as a central priority.[36] As noted by the Secretary-General, much remained to be done; all too often individuals and corporations found that they were denied the rights and benefits that international law and treaties provided for.[37] Many States failed to sign or ratify treaties, not because of any lack of political will, but because of a simple shortage of technical expertise when it came to the implementation of treaty provisions. One of the central objectives of the United Nations was to assist Governments in establishing the necessary conditions for compliance with treaty commitments.[38]

267. The need to increase substantially the resources of the UNCITRAL secretariat was reflected in the proposed revisions to the medium-term plan for the period 2002-2005. As regards UNCITRAL and the International Trade Law Branch (UNCITRAL secretariat), it was proposed in the medium-term plan that, in order to enable the Branch to carry out the work programme of the Commission, it was necessary to implement the request by the General Assembly and the Commission to strengthen the secretariat of the Commission in view of its increased work programme. Since the costs of strengthening the UNCITRAL secretariat had to be "within the bounds of the resources available in the Organization", the Organization as a whole would have to consider its priorities and decide on the amount of resources it wished to allocate to that area of its activity. The Commission noted the suggested revised structure of the UNCITRAL secretariat, which would be upgraded to the level of a division within OLA. The proposed revisions to the medium-term plan for the period 2002-2005 had been transmitted to the Committee for Programme and Coordination, whose deliberations were crucial for the preparation of the session of the Fifth Committee of the General Assembly, which would be taking the ultimate budgetary recommendation.

268. It was submitted that the strengthening of the UNCITRAL secretariat was necessary for several reasons: one was that there was a clear demand from Member States for UNCITRAL to prepare legal standards for a globalized economy in areas where until recently the United Nations had not been active; second was the increased need for coordination among a growing number of international organizations (whether intergovernmental or non-governmental) that formulated rules and standards for international trade; third was the increased need for technical assistance, in particular in developing countries, that required particular attention on the part of UNCITRAL as the formulating agency when national Governments considered implementation of international standards in domestic legislation.

269. The Commission welcomed the above-mentioned request by the General Assembly, in its resolution 56/79, paragraph 13, to the Secretary-General to strengthen the secretariat of the Commission within the bounds of the resources available in the Organization so as to ensure and enhance the effective implementation of the programme of the Commission (see para. 258, above).

270. However, while appreciating the initial steps taken by the Assembly, the Commission noted with concern that, if the secretariat of the Commission was not significantly strengthened, the Commission would have to reduce its work programme.

271. After discussion, the Commission adopted the following recommendation:

> "*The United Nations Commission on International Trade Law*,
>
> "*Recalling* its mandate under General Assembly resolution 2205 (XXI) of 17 December 1966 to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, and particularly those of developing countries, in the extensive development of international trade,
>
> "*Convinced* that the establishment of modern private law standards on international trade in a manner that is acceptable to States with

different legal, social and economic systems significantly contributes to the development of harmonious international relations, respect for the rule of law, peace and stability, and is indispensable for designing a sustainable economy,

"*Convinced also* that modernization of private law standards in international trade is essential for supporting economic development and is indispensable for designing a sustainable economy,

"*Noting* a clear demand that emanates from Member States, in particular developing countries, for UNCITRAL to prepare legal standards for a globalized economy in an increasing number of areas, and that as a result of those demands the number of major projects on the agenda of the Commission has more than doubled in the year 2001 as compared with previous years,

"*Noting also* the increased need for coordination among a growing number of international organizations (whether intergovernmental or non-governmental) that formulate rules and standards for international trade, and the specific function to be performed by UNCITRAL in that respect, as mandated by the General Assembly in its resolution 2205 (XXI) and reiterated by the General Assembly in subsequent resolutions,

"*Noting further* the increased need for technical assistance, in particular in developing countries, that requires particular attention on the part of UNCITRAL as the formulating agency to assist national Governments when they consider modernizing domestic trade laws and rules of practice through implementation of international standards,

"*Believing* that one of the essential conditions of the successful development and enactment of the legal standards elaborated by UNCITRAL is the high level of quality and professionalism constantly maintained by the International Trade Law Branch of the United Nations Office of Legal Affairs, serving as the substantive secretariat of the Commission,

"*Concerned* about the considerably increased demands on personnel resources of the secretariat of the Commission resulting from the increased work programme, and its inability to continue servicing the Commission's working groups and performing other related tasks such as assisting Governments in establishing the necessary work for compliance with treaty commitments,

"*Being aware* that, if the secretariat of the Commission is not given sufficient resources to carry out the tasks entrusted to it, the Commission will have to defer or discontinue work on topics on its agenda and reduce the number of its working groups,

"*Noting* the recommendation contained in the report of the Office of Internal Oversight Services on the in-depth evaluation of legal affairs[5] that the Office of Legal Affairs should review the secretariat requirements that an expansion from three to six UNCITRAL working groups require and present to UNCITRAL, at its upcoming review of the practical applications of the new working methods, different options that would ensure the necessary level of secretariat services,

"*Noting also* the comments provided by OLA at the opening of the thirty-fifth session of the Commission regarding the recommendation contained in the report of the Office of Internal Oversight Services,

"*Convinced* that the current working methods of the Commission have proved their efficiency,

"*Requests* the Secretary-General to consider measures to strengthen significantly the UNCITRAL secretariat within the bounds of the resources available in the Organization, if possible already during the current biennium and in any case during the 2004-2005 biennium."

---

[5] E/AC.51/2002/5.

XVI. Coordination and cooperation

A. Asian-African Legal Consultative Organization

272. On behalf of the Asian-African Legal Consultative Organization (AALCO), it was stated that, in view of the importance AALCO attached to the Commission's work, it had made it a practice to consider at its annual sessions the report of the Commission. AALCO welcomed the completion of the UNCITRAL Model Law on International Commercial Conciliation. The Commission was reminded of the interest of AALCO in the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the UNCITRAL Model Law on International Commercial Arbitration. In that connection, reference was made to the success of regional arbitration centres in Kuala Lumpur, Cairo and Lagos, Nigeria. Reference was also made to another regional arbitration centre to become operational in Tehran in the near future. In addition, it was observed that AALCO had a special interest in the Commission's work on electronic commerce. Thus, support was expressed for the UNCITRAL Model Laws on Electronic Commerce and Electronic Signatures, as well as for the current work towards an international text on electronic contracting. AALCO also welcomed the work of the Commission on insolvency law, security interests, transport law and privately financed infrastructure projects. Moreover, AALCO strongly urged the Commission to enlarge its membership to accommodate the interests of various countries in light of their importance in international trade. AALCO also expressed interest in an international trade law workshop to be held in cooperation with the secretariat of the Commission with a view to disseminating information on the work of the Commission in the Asian region. An invitation was addressed to members and observers of the Commission and to the secretariat to attend the forty-first annual session of AALCO, to be held in Abuja from 15 to 20 July 2002.

B. International Development Law Institute

273. On behalf of the International Development Law Institute (IDLI), it was stated that IDLI, which promoted the rule of law and good governance and the use of legal resources in the development process in developing countries and countries with economies in transition, fulfilled its mandate through training, technical assistance, research, and publication. It was also observed that IDLI had worked with over 12,000 legal professionals from 163 countries and had fostered the founding of IDLI alumni associations in 31 countries and maintained and supported a network of counterpart partner organizations in the other countries in which it had worked. Those organizations carried out in their countries the same kind of work that IDLI carried out on an international level.

274. In addition, it was observed that IDLI had taken note of document A/CN.9/515 which described the training and technical assistance activities carried out by UNCITRAL in pursuit of its mandate and wished to report that in the implementation of its training and technical assistance activities it had found that the demand for training and technical assistance in the field of international trade law was high. It was also observed that IDLI had responded to that demand by providing training in many of its regular and tailor-made courses and had provided technical assistance on international trade law in several countries. In that work, it was said, IDLI often provided training on the UNCITRAL texts in the relevant field.

275. IDLI tabled for consideration the following ways in which it could cooperate with UNCITRAL on training and technical assistance on international trade law with particular reference to the UNCITRAL texts:

(a) Joint or IDLI organization of training programmes or conferences;

(b) Development of training materials;

(c) Identification of experts from the IDLI staff or from its expert network for training or technical assistance;

(d) Training of trainers;

(e) Developing the capacities of the IDLI alumni associations and counterpart organizations to provide training and technical assistance in that area;

(f) Reporting on the work of UNCITRAL in IDLI publications.

276. It was also said that information on current IDLI programmes and activities could be found on the IDLI web site at www.idli.org.

277. Moreover, it was stated that, at its meeting of 5 November 2001, the Board of Directors urged the IDLI secretariat to find ways of cooperating with UNCITRAL and suggested finding ways to encourage participation by IDLI staff and IDLI alumni in the work of UNCITRAL in order to help UNCITRAL secure quality participation of legal professionals from its developing country members. To that end IDLI said that it looked forward to following up on preliminary discussions with UNCITRAL on ways for IDLI alumni to be represented in the work of UNCITRAL as an organized delegation selected by IDLI on the basis of criteria to be agreed upon by IDLI and UNCITRAL. It was also pointed out that, for those forms of cooperation that required other than incidental financial resources available in the two organizations' regular budgets, IDLI invited the UNCITRAL secretariat to explore with it ways to mobilize such resources.

C. Global Center for Dispute Resolution Research

278. On behalf of the Global Center for Dispute Resolution Research, a non-governmental, non-profit, international organization, it was stated that the Center conducted fact-based research on dispute resolution matters and would be prepared to assist the Commission, for example, with its work on monitoring legislative implementation of the 1958 New York Convention.

XVII. Other business

A. Possible study of commercial and financial fraud

279. It was observed that, while the work of the Commission had ably focused on legislative and non-legislative texts in order to harmonize and facilitate international commerce, there was another dimension of commercial law and practice of importance that had not been sufficiently dealt with by international bodies, namely fraudulent practices that affected legitimate instruments of trade and finance. Those frauds, typically international in character, had a significant adverse economic impact on world trade and negatively affected the legitimate devices used in it.

280. It was stated that, although those schemes might be obvious in retrospect, they appealed to thousands of sophisticated investors throughout the world. While no figures had been calculated for the reported losses from such schemes, in 2000 informal average estimates from entities involved in combating high yield financial instrument fraud alone placed annual worldwide losses at US$ 15 billion. Even more discouraging was the growth of those frauds despite attempts at cautionary warnings and exposure. It was observed that the advent of the Internet had offered additional avenues to the perpetrators. Those figures, however, did not detail fully the consequences of those schemes. It was reported to the Commission that such consequences included the following:

(a) Compromise of legitimate instruments of trade and commerce, since those schemes cast the pall of suspicion on the legitimate instruments that they used;

(b) Misuse of international organizations, since misappropriation of names or use of the names of major international organizations were common in these schemes. As a result, major international organizations including the World Bank, the International Monetary Fund, the Bank of International Settlements, and regional development banks had been associated with the schemes, as well as central banks of every major country. Those organizations were regularly compelled to use their resources to rebut those references and deny their role and the existence or legitimacy of those schemes; loss of time and energy was also experienced by individuals who might directly or indirectly be victims of fraudulent schemes;

(c) Loss of confidence in the mechanisms of international monetary transfer, since a regular feature of those schemes was reference to and use of the international monetary transfer system in the transfer of funds. The schemes included false and misleading references to the systems and their components and use of the systems to channel funds from victims to perpetrators in such a manner that they were difficult to trace. In addition, the systems were used regularly to mask transfers of funds and to channel them in order to avoid governmental scrutiny;

(d) Increased costs to international trade and commerce, since the growing fraudulent use of documentation led to a downgrading of existing trade systems and channels. Many of those schemes involved non-existent goods, falsified or forged documents such as bills of lading or warehouse receipts, sales of non-existent commodities, or multiple sales of the same goods. Additional costs to trade were also caused by fraud that involved rings and use of intermediaries acting in concert to defraud legitimate traders and businesses.

281. It was observed that, while criminal law implications should not be the focus of that work, an UNCITRAL project regarding commercial and financial fraud might provide useful elements for fighting organized crime. While the role of organized crime in those schemes was not yet apparent, they offered a fertile ground for breeding such associations. In addition, the schemes offered a potential means for illegal operatives to conveniently obtain funds.

282. It was pointed out that, while the illegitimate character of those schemes had long been apparent to authorities, there had been extensive and serious difficulties in combating them. The problems included the following matters:

(a) The international nature deliberately conferred on most fraudulent schemes. The relative roles and contribution of the various parties involved were often difficult to piece together and understand. Moreover, those parties were typically located in different jurisdictions. Moreover, all typically proclaimed their own innocence and pointed to the misconduct of others who inevitably were not accessible in the same jurisdiction as the cause of any loss. On an international level, the difficulties and complexities faced domestically in pursuing those schemes were multiplied. As a result, few civil or criminal prosecutors were able to muster the resources to pursue the perpetrators or the funds;

(b) The multiple domestic jurisdictions. Unlike violent crime, those fraudulent schemes did not fit into any one regulatory category. They might involve criminal elements as well as civil ones. Moreover, in each of those fields, they generally involved multiple dimensions, including the law governing ocean carriage, storage of goods, various types of transportation documents of title, securities, bank regulation, insurance regulation, consumer protection, pension fund regulation, regulation of securities brokers, and regulation of professional attorneys and accountants. Often those jurisdictional limits were not well defined and overlapped, leading to confusion and reluctance to utilize limited resources to combat them;

(c) The multiple disciplines involved. Most of the schemes cleverly included a variety of esoteric elements so that few professionals could address all of their components. As a result, most professionals were reluctant to state opinions regarding those matters because they extended beyond their expertise. Unfortunately, the perpetrators suffered from no such inhibitions;

(d) Hidden and dispersed funds. In addition to the international locations of the perpetrators of those schemes, the funds were typically sent to other nations and divided among the various players in a confusing manner increasing the difficulties of pursuit, proof and recovery. Recovery often presented difficulties when the funds had been transferred to jurisdictions that did not support actions to redress the defrauded parties. Where money-laundering was involved, those difficulties of discovery were further compounded.

283. The view was expressed that the Commission combined a governmental perspective with internationally recognized expertise in international commerce along with a long-standing tradition of cooperation with international organizations in the private sector and collaboration with recognized international experts. The Commission was also well placed to appreciate the workings of institutions of commerce and finance whose cooperation was essential for success and whose operations must not be unduly disrupted.

284. In addition to the competence of the Commission to undertake such an effort, many of those schemes touched on matters that had been specifically addressed by texts elaborated by the Commission, including the United Nations Convention on the Assignment of Receivables in International Trade, the UNCITRAL Model Law on International Credit Transfers, the UNCITRAL Model Law on Procurement of Goods, Construction and Services, the UNCITRAL Model Law on Cross-Border Insolvency and the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit. The topic of fraud was considered during the deliberations that produced those texts, all of which contained important principles and

mechanisms to encourage transparency and reduce the occasion for fraud, corruption and self-dealing.

285. It was suggested that a study could be prepared by the secretariat to describe fraudulent financial and trade practices in various areas of trade and finance, and describe the ways in which the risk of common types of fraud affected the value of contractual and financial commitments (such as commercial paper, bills of lading, guarantees). Further, the study could identify weaknesses in commercial laws, non-legislative commercial and financial rules and trade and financial practices that were being exploited by perpetrators and other criminals for their goals. The study might also, to the extent feasible, describe trade law and civil regulatory measures that some countries might have taken to combat such crime.

286. It was proposed that the topic should be studied and placed before the thirty-sixth session of the Commission in 2003 so as to enable the Commission to take any action with respect to it. On the basis of such a study, the Commission could consider the need for any measures, such as legislative and other recommendations, as to how to prevent such illicit actions more effectively, with a focus on trade laws, rules and practices. Even if ultimately the Commission would find that preparing such recommendations was not feasible, the study would in itself be a useful product that would raise awareness of the problems and foster a change of attitudes and practices.

287. In response to the proposal, views were expressed recognizing that financial and commercial fraud constituted a growing problem and that measures to counter it were of great concern to Governments. It was also recognized that such fraud adversely affected the trust in the mechanisms of trade, finance and investment and had a destabilizing effect on the markets. Commercial entities from developing countries, inasmuch as they had limited experience with instruments of international trade, were particularly vulnerable and would benefit from information and advice as to how to avoid being defrauded. The work of the Commission would also help States, intergovernmental and non-governmental organizations to design or adjust legislative and non-legislative private law regimes that were better suited to prevent fraudulent schemes.

288. Serious reservations were also expressed regarding the feasibility of the project. It was stressed that the work, if it were to be undertaken, had the potential of addressing or having implications for areas that were dealt with by other organizations, whose focus was not trade law, and that care should be taken that the Commission should not be called to consider issues that fell outside its established area of work and expertise. It was also considered that, assuming the project would deal with private law aspects of fraud, the scope of the project was undefined and needed careful consideration.

289. A number of delegations shared the view that the project, despite its potential usefulness, could not be undertaken given the alarming situation regarding the personnel resources of the secretariat (see para. 268, above). Statements were made that it was ill-advised to add new projects at the time the Commission might be compelled to slow down or reduce its current work programme for lack of sufficient resources, and that undertaking the proposed study was contingent on additional personnel resources being made available to the secretariat of the Commission. In addition, statements were made that the proposed projects should not be given a high priority and that the Commission should rather place more emphasis on its training and technical assistance activities.

290. After discussion, the Commission was in agreement that it would be useful to prepare the proposed study for consideration of the Commission, without, at the present stage, committing the Commission to any action being taken on the basis of the study. In requesting the secretariat to undertake work on the study, the Commission did not put any time limit on the request. It was understood that the work on the study should be undertaken only to the extent that work did not claim resources needed for other projects on the Commission's agenda.

B. Bibliography

291. The Commission noted with appreciation the bibliography of recent writings related to the work of the Commission (A/CN.9/517). The Commission stressed the importance for the bibliography to be as complete as possible and, for that reason, requested Governments, academic institutions, other relevant organizations and individual authors to send copies of such publications to the secretariat.

C. Willem C. Vis International Commercial Arbitration Moot

292. It was noted that the Institute of International Commercial Law at Pace University School of Law, New York, had organized the eighth Willem C. Vis International Commercial Arbitration Moot in Vienna from 22 to 28 March 2002. In addition, it was noted that legal issues dealt with by the teams of students participating in the Moot had been based on the United Nations Convention on Contracts for the International Sale of Goods, the United Nations Convention on the Assignment of Receivables in International Trade and the Arbitration Rules of the International Chamber of Commerce. Moreover, it was noted that, in the 2002 Moot, some 108 teams had participated from law schools in some 36 countries, involving about 650 students and about 275 arbitrators. The best team in oral arguments was that of the National University of Singapore. It was also noted that the ninth Moot was to be held at Vienna from 11 to 17 April 2003. It was also noted that the secretariat of the Commission had offered a series of lectures on texts prepared by UNCITRAL to about 120 of the Moot participants.

293. The Commission expressed its appreciation to the Institute of International Commercial Law at Pace University School of Law for organizing the Moot and to the secretariat for sponsoring it and offering a series of lectures. It was widely felt that the Moot, with its broad international participation, was an excellent method of disseminating information about uniform law texts and teaching international trade law.

D. UNCITRAL web site

294. The Commission expressed its appreciation for the UNCITRAL web site (http://www.uncitral.org). It was noted that the web site was an important component of the Commission's overall programme of information activities and training and technical assistance, which attracted some 900 users per day from approximately 95 jurisdictions. In that connection, it was stated that the web site provided delegates to working groups and the Commission with rapid access to working texts in the six official languages of the United Nations, thus promoting transparency and facilitating the work of the Commission. It was also noted that the web site provided global free access for a wide range of interested users, including parliamentarians, judges, practitioners, and academics, and that materials on the web site included, inter alia, adopted texts, up-to-date reports on the status of conventions and adopted texts, court and arbitral decisions interpreting UNCITRAL texts (CLOUT), and bibliographies of scholarly writing related to the work of the Commission. It was further noted that the secretariat anticipated completing the placement of all Yearbooks and *travaux préparatoires* of all adopted texts on the web site by the next Commission session. The Commission noted with appreciation the expanded availability on the web site of documents in the six official languages of the United Nations and urged the secretariat to continue its efforts in increasing the range of available archival texts.

XVIII. Date and place of future meetings

A. Thirty-sixth session of the Commission

295. The Commission approved holding its thirty-sixth session in Vienna from 30 June to 18 July 2003. It was noted that the duration of the session might be shortened, should a shorter session become advisable in view of the draft texts produced by the various working groups.

B. Sessions of working groups up to the thirty-sixth session of the Commission

296. The Commission approved the following schedule of meetings for its working groups, subject to possible cancellation of working group sessions being decided by the respective working groups in situations where, for lack of the necessary resources, the secretariat could not envisage the timely production of the necessary documentation:

(a) Working Group I (Privately Financed Infrastructure Projects) is to hold its fifth session at Vienna from 9 to 13 September 2002, immediately before the tenth session of Working Group III, and its sixth session, if necessary, in New York from 24 to 28 March 2003, immediately before the eleventh session of Working Group III;

(b) Working Group II (Arbitration) is to hold its thirty-seventh session at Vienna from 7 to 11 October 2002, immediately before the fortieth session of Working Group IV, and its thirty-eighth session in New York from 12 to 16 May 2003, immediately after the forty-first session of Working Group IV (It may be noted that the Commission originally approved that the thirty-eighth session of Working Group II be held from 28 April to 2 May 2003. However, those dates had to be revised to the current dates owing to the unavailability of a conference room.);

(c) Working Group III (Transport Law) is to hold its tenth session at Vienna from 16 to 20 September 2002, immediately after the fifth session of Working Group I, and its eleventh session in New York from 31 March to 4 April 2003, immediately after the sixth session of Working Group I;

(d) Working Group IV (Electronic Commerce) is to hold its fortieth session at Vienna from 14 to 18 October 2002, immediately after the thirty-seventh session of Working Group II, and its forty-first session in New York from 5 to 9 May 2003, immediately before the thirty-eighth session of Working Group II;

(e) Working Group V (Insolvency Law) is to hold its twenty-seventh session at Vienna from 9 to 13 December 2002, immediately before the second session of Working Group VI, and its twenty-eighth session in New York from 24 to 28 February 2003, immediately before the third session of Working Group VI;

(f) Working Group VI (Security Interests) is to hold its second session at Vienna from 16 to 20 December 2002, immediately after the twenty-seventh session of Working Group V, and its third session in New York from 3 to 7 March 2003, immediately after the twenty-eighth session of Working Group V.

C. Sessions of working groups after the thirty-sixth session of the Commission in 2003

297. The Commission noted that tentative arrangements had been made for working group meetings after its thirty-sixth session (the arrangements are subject to the approval of the Commission at its thirty-sixth session):

(a) Working Group I (Privately Financed Infrastructure Projects) is to hold its seventh session, if necessary, at Vienna from 6 to 10 October 2003;

(b) Working Group II (Arbitration) is to hold its thirty-ninth session at Vienna from 10 to 14 November 2003;

(c) Working Group III (Transport Law) is to hold its twelfth session at Vienna from 13 to 17 October 2003;

(d) Working Group IV (Electronic Commerce) is to hold its forty-second session at Vienna from 17 to 21 November 2003;

(e) Working Group V (Insolvency Law) is to hold its twenty-ninth session at Vienna from 1 to 5 September 2003;

(f) Working Group VI (Security Interests) is to hold its fourth session at Vienna from 8 to 12 September 2003.

Notes

[1] Pursuant to General Assembly resolution 2205 (XXI), the members of the Commission are elected for a term of six years. Of the current membership, 19 were elected by the General Assembly at its fifty-second session, on 24 November 1997 (decision 52/314) and 17 were elected by the General Assembly at its fifty-fifth session, on 16 October 2000 (decision 55/308). By General Assembly resolution 31/99 of 15 December 1976, the Assembly altered the dates of commencement and termination of membership by deciding that members would take office at the beginning of the first day of the regular annual session of the Commission immediately following their election, and that their terms of office would expire on the last day prior to the opening of the seventh regular annual session following their election.

[2] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 17* (A/54/17), para. 337.

[3] Ibid., paras. 340-343.

[4] Ibid., paras. 344-350.

[5] Ibid., paras. 371-373.

[6] Ibid., paras. 374-375.

[7] Ibid., *Fifty-fifth Session, Supplement No. 17* (A/55/17), para. 396.

[8] Ibid., *Fifty-sixth Session, Supplement No. 17* (A/56/17), paras. 309-312.

[9] Ibid., para. 313.

[10] Ibid., *Fifty-fourth Session, Supplement No. 17* (A/54/17), paras. 381-385.

[11] Ibid., *Fifty-fifth Session, Supplement No. 17* (A/55/17), paras. 400-409.

[12] Ibid., *Fifty-sixth Session, Supplement No. 17* (A/56/17), paras. 296-308.

[13] Ibid., *Fifty-fifth Session, Supplement No. 17* (A/55/17), para. 459.

[14] Ibid., *Fifty-sixth Session, Supplement No.* 17 (A/56/17), para. 351.

[15] Ibid., paras. 352-354.

[16] Ibid., paras. 355-356.

[17] Ibid., para. 357.

[18] Ibid., paras. 358-359.

[19] Ibid., para. 358.

[20] Ibid., *Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), paras. 291-293.

[21] Ibid., *Fifty-fifth Session, Supplement No. 17* (A/55/17), para. 387.

[22] Ibid., *Fifty-first Session, Supplement No. 17* (A/51/17).

[23] Ibid., para. 210.

[24] Ibid., para. 215.

[25] Ibid., *Fifty-third Session, Supplement No. 17* (A/53/17), para. 264.

[26] Ibid., *Fifty-fourth Session, Supplement No. 17* (A/54/17), para. 413.

[27] Ibid., para. 415.

[28] Ibid., *Fifty-sixth Session, Supplement No. 17* (A/56/17), para. 345.

[29] Ibid., *Fifty-fifth Session, Supplement No. 17* (A/55/17), paras. 195-368.

[30] Ibid., para. 375.

[31] Ibid., para. 379.

[32] Ibid., *Fifty-sixth Session, Supplement No. 17* (A/56/17), paras. 366-369.

[33] Ibid., para. 369.

[34] Ibid., *Fiftieth Session, Supplement No. 17* (A/50/17), paras. 401-404.

[35] Ibid., *Fifty-sixth Session, Supplement No. 17* (A/56/17), paras. 371.

[36] Ibid., *Fifty-fifth Session, Supplement No. 1* (A/55/1), para. 273. See also ibid., *Fifty-sixth Session, Supplement No. 1* (A/56/1), para. 216.

[37] Ibid., para. 278.

[38] Ibid., *Fifty-sixth Session, Supplement No. 1* (A/56/1), paras. 219-220.

Annex I

UNCITRAL Model Law on International Commercial Conciliation

Article 1. Scope of application and definitions

(1) This Law applies to international[a] commercial[b] conciliation.

(2) For the purposes of this Law, "conciliator" means a sole conciliator or two or more conciliators, as the case may be.

(3) For the purposes of this Law, "conciliation" means a process, whether referred to by the expression conciliation, mediation or an expression of similar import, whereby parties request a third person or persons ("the conciliator") to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The conciliator does not have the authority to impose upon the parties a solution to the dispute.

(4) A conciliation is international if:

(a) The parties to an agreement to conciliate have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) The State in which the parties have their places of business is different from either:

(i) The State in which a substantial part of the obligations of the commercial relationship is to be performed; or

(ii) The State with which the subject matter of the dispute is most closely connected.

(5) For the purposes of this article:

(a) If a party has more than one place of business, the place of business is that which has the closest relationship to the agreement to conciliate;

(b) If a party does not have a place of business, reference is to be made to the party's habitual residence.

(6) This Law also applies to a commercial conciliation when the parties agree that the conciliation is international or agree to the applicability of this Law.

---

[a] States wishing to enact this Model Law to apply to domestic as well as international conciliation may wish to consider the following changes to the text:
- Delete the word "international" in paragraph (1) of article 1; and
- Delete paragraphs (4), (5) and (6) of article 1.

[b] The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

(7) The parties are free to agree to exclude the applicability of this Law.

(8) Subject to the provisions of paragraph (9) of this article, this Law applies irrespective of the basis upon which the conciliation is carried out, including agreement between the parties whether reached before or after a dispute has arisen, an obligation established by law, or a direction or suggestion of a court, arbitral tribunal or competent governmental entity.

(9) This Law does not apply to:

(a) Cases where a judge or an arbitrator, in the course of judicial or arbitral proceedings, attempts to facilitate a settlement; and

(b) [...].

Article 2. Interpretation

(1) In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

(2) Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Article 3. Variation by agreement

Except for the provisions of article 2 and article 6, paragraph (3), the parties may agree to exclude or vary any of the provisions of this Law.

Article 4. Commencement of conciliation proceedings[c]

(1) Conciliation proceedings in respect of a dispute that has arisen commence on the day on which the parties to that dispute agree to engage in conciliation proceedings.

(2) If a party that invited another party to conciliate does not receive an acceptance of the invitation within thirty days from the day on which the invitation was sent, or within such other period of time as specified in the invitation, the party may elect to treat this as a rejection of the invitation to conciliate.

Article 5. Number and appointment of conciliators

(1) There shall be one conciliator, unless the parties agree that there shall be two or more conciliators.

---

[c] The following text is suggested for States that might wish to adopt a provision on the suspension of the limitation period:

Article X. Suspension of limitation period

(1) When the conciliation proceedings commence, the running of the limitation period regarding the claim that is the subject matter of the conciliation is suspended.

(2) Where the conciliation proceedings have terminated without a settlement agreement, the limitation period resumes running from the time the conciliation ended without a settlement agreement.

(2) The parties shall endeavour to reach agreement on a conciliator or conciliators, unless a different procedure for their appointment has been agreed upon.

(3) Parties may seek the assistance of an institution or person in connection with the appointment of conciliators. In particular:

(a) A party may request such an institution or person to recommend suitable persons to act as conciliator; or

(b) The parties may agree that the appointment of one or more conciliators be made directly by such an institution or person.

(4) In recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, where appropriate, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

(5) When a person is approached in connection with his or her possible appointment as conciliator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. A conciliator, from the time of his or her appointment and throughout the conciliation proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him or her.

Article 6. Conduct of conciliation

(1) The parties are free to agree, by reference to a set of rules or otherwise, on the manner in which the conciliation is to be conducted.

(2) Failing agreement on the manner in which the conciliation is to be conducted, the conciliator may conduct the conciliation proceedings in such a manner as the conciliator considers appropriate, taking into account the circumstances of the case, any wishes that the parties may express and the need for a speedy settlement of the dispute.

(3) In any case, in conducting the proceedings, the conciliator shall seek to maintain fair treatment of the parties and, in so doing, shall take into account the circumstances of the case.

(4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute.

Article 7. Communication between conciliator and parties

The conciliator may meet or communicate with the parties together or with each of them separately.

Article 8. Disclosure of information

When the conciliator receives information concerning the dispute from a party, the conciliator may disclose the substance of that information to any other party to the conciliation. However, when a party gives any information to the conciliator, subject to a specific condition that it be kept confidential, that information shall not be disclosed to any other party to the conciliation.

Article 9. Confidentiality

Unless otherwise agreed by the parties, all information relating to the conciliation proceedings shall be kept confidential, except where disclosure is required under the law or for the purposes of implementation or enforcement of a settlement agreement.

Article 10. Admissibility of evidence in other proceedings

(1) A party to the conciliation proceedings, the conciliator and any third person, including those involved in the administration of the conciliation proceedings, shall not in arbitral, judicial or similar proceedings rely on, introduce as evidence or give testimony or evidence regarding any of the following:

(a) An invitation by a party to engage in conciliation proceedings or the fact that a party was willing to participate in conciliation proceedings;

(b) Views expressed or suggestions made by a party in the conciliation in respect of a possible settlement of the dispute;

(c) Statements or admissions made by a party in the course of the conciliation proceedings;

(d) Proposals made by the conciliator;

(e) The fact that a party had indicated its willingness to accept a proposal for settlement made by the conciliator;

(f) A document prepared solely for purposes of the conciliation proceedings.

(2) Paragraph (1) of this article applies irrespective of the form of the information or evidence referred to therein.

(3) The disclosure of the information referred to in paragraph (1) of this article shall not be ordered by an arbitral tribunal, court or other competent governmental authority and, if such information is offered as evidence in contravention of paragraph (1) of this article, that evidence shall be treated as inadmissible. Nevertheless, such information may be disclosed or admitted in evidence to the extent required under the law or for the purposes of implementation or enforcement of a settlement agreement.

(4) The provisions of paragraphs (1), (2) and (3) of this article apply whether or not the arbitral, judicial or similar proceedings relate to the dispute that is or was the subject matter of the conciliation proceedings.

(5) Subject to the limitations of paragraph (1) of this article, evidence that is otherwise admissible in arbitral or judicial or similar proceedings does not become inadmissible as a consequence of having been used in a conciliation.

Article 11. Termination of conciliation proceedings

The conciliation proceedings are terminated:

(a) By the conclusion of a settlement agreement by the parties, on the date of the agreement;

(b) By a declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration;

(c) By a declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or

(d) By a declaration of a party to the other party or parties and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

Article 12. Conciliator acting as arbitrator

Unless otherwise agreed by the parties, the conciliator shall not act as an arbitrator in respect of a dispute that was or is the subject of the conciliation proceedings or in respect of another dispute that has arisen from the same contract or legal relationship or any related contract or legal relationship.

Article 13. Resort to arbitral or judicial proceedings

Where the parties have agreed to conciliate and have expressly undertaken not to initiate during a specified period of time or until a specified event has occurred arbitral or judicial proceedings with respect to an existing or future dispute, such an undertaking shall be given effect by the arbitral tribunal or the court until the terms of the undertaking have been complied with, except to the extent necessary for a party, in its opinion, to preserve its rights. Initiation of such proceedings is not of itself to be regarded as a waiver of the agreement to conciliate or as a termination of the conciliation proceedings.

Article 14. Enforceability of settlement agreement[d]

If the parties conclude an agreement settling a dispute, that settlement agreement is binding and enforceable ... [*the enacting State may insert a description of the method of enforcing settlement agreements or refer to provisions governing such enforcement*].

---

[d] When implementing the procedure for enforcement of settlement agreements, an enacting State may consider the possibility of such a procedure being mandatory.

Annex II

List of documents before the Commission at its thirty-fifth session

Symbol	*Title or description*
A/CN.9/503	Provisional agenda, annotations thereto and scheduling of meetings of the thirty-fifth session
A/CN.9/504	Report of the Working Group on Insolvency Law on the work of its twenty-fourth session
A/CN.9/505	Report of the Working Group on Privately Financed Infrastructure Projects on the work of its fourth session
A/CN.9/506	Report of the Working Group on Arbitration on the work of its thirty-fifth session
A/CN.9/507	Report of the Working Group on Insolvency Law on the work of its twenty-fifth session
A/CN.9/508	Report of the Working Group on Arbitration on the work of its thirty-sixth session
A/CN.9/509	Report of the Working Group on Electronic Commerce on the work of its thirty-ninth session
A/CN.9/510	Report of the Working Group on Transport Law on the work of its ninth session
A/CN.9/511 and Corr.1	Report of the Working Group on Insolvency Law on the work of its twenty-sixth session
A/CN.9/512	Report of Working Group VI (Security Interests) on the work of its first session
A/CN.9/513 and Add.1-2	Draft Model Law on International Commercial Conciliation: compilation of comments by Governments and international organizations
A/CN.9/514	Draft Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Conciliation
A/CN.9/515	Note by the Secretariat on training and technical assistance
A/CN.9/516	Note by the Secretariat on the status of conventions and model laws
A/CN.9/517	Note by the Secretariat on a bibliography of recent writings related to the work of UNCITRAL
A/CN.9/518	Report on the fourth UNCITRAL-INSOL Judicial Colloquium on Cross-Border Insolvency, 2001